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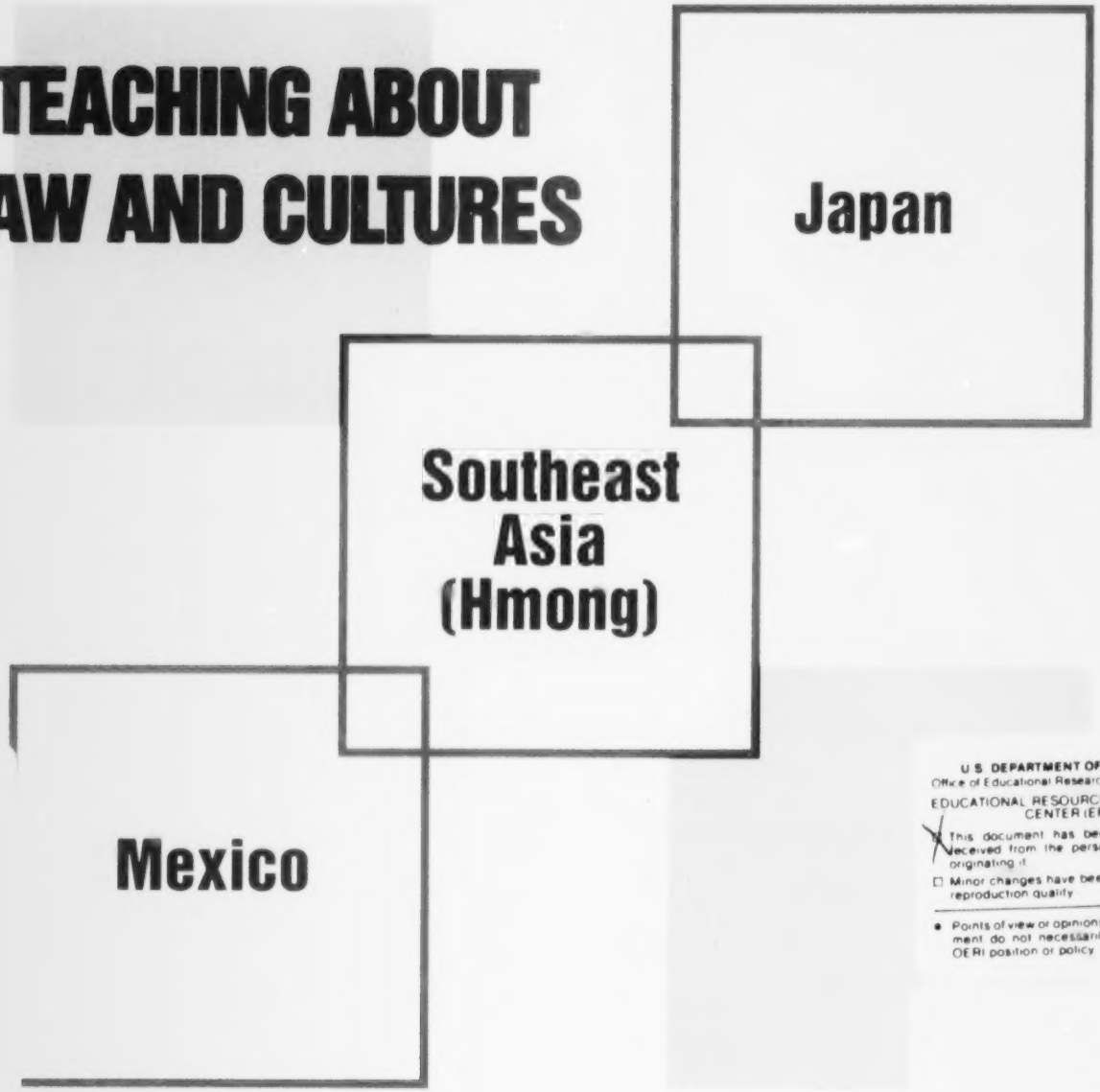
ABSTRACT

To meet the needs of students who are Asian and Hispanic refugees, as well as the needs of a democratic society, teachers must be able to teach effectively an understanding and appreciation of the U.S. legal and judicial system while acknowledging, responding to, and integrating the cultural backgrounds and experiences of a diverse student population. This program is the result of a statewide program to develop, test, and train teachers in an innovative approach to law-related education that integrates the teaching of law and culture. The program focused on materials, strategies, teacher training, and community partnerships for teaching law-related education through an exploration of law and culture in the United States and three societies strongly represented in Colorado's population: Mexico, Japan, and Southeast Asia (Hmong). An outline is included to be used as a structural framework to guide the analysis of legal systems. Areas for consideration include the concept, purpose, and source of law in the culture, the judicial structure, the role of the cultural economic philosophy with regard to the formal legal system, and specific applications of the law. Lessons include objectives, handouts to be used, activities, and teacher background information. Units concentrate on history, geography and map skills, cultural differences and customs, and how ethnic customs should be viewed and treated in court when they conflict with federal or state laws. Units on Mexico cover the legal and political history of that country. Immigration is examined from Mexican and U.S. views. (DK)

ED 361 265

TEACHING ABOUT LAW AND CULTURES



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Culture-Focused Law-Related Education Project
Social Science Education Consortium

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TEACHING ABOUT LAW AND CULTURES:

JAPAN, SOUTHEAST ASIA (HMONG), AND MEXICO

By

Barbara Miller and Lynn Parisi

with Marco Antonio Abarca, Marcia Krieger,
Hiroshi Motomura, Vang Pobzeb, and Kenneth Rodriguez

Culture-Focused Law-Related Education Project
Social Science Education Consortium
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In 1990, the Social Science Education Consortium was funded by the U.S. Department of Education to conduct a one-year, statewide program to develop, test, and train teachers in an innovative approach to law-related education (LRE) that integrates the teaching of law and culture. Designed to address the needs of a state and school population of ever-increasing ethnic and cultural diversity, the program focused on materials, strategies, teacher training, and community partnerships for teaching LRE through an exploration of law and culture in the United States and three societies strongly represented in Colorado's population: Mexico, Japan, and Southeast Asia (Hmong). These cultures were selected to provide students with an appreciation of the wide range of legal traditions represented in U.S. residents.

Two groups of people were especially important to the project's success: the project advisory board and the eight school district teams that participated in project activities, testing and responding to the lessons developed. The members of these two groups are listed below.

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Barbara Miller
Lynn Parisi

INTRODUCTION

A Rationale for Teaching About Law and Culture

America's population is undergoing radical changes that are predicted to continue into the next century. Census figures reveal that American minority groups are growing at a faster rate than the white population. The Hispanic and Asian-American populations are particularly notable for their rapid growth, in part because of immigration.

These demographic changes are having a profound impact on the judicial system. One court system in Los Angeles now provides interpreters for 80 different languages.[1] Growing numbers of culture-related cases are being reported by the popular media. For example, the Fresno, California, legal system recently wrestled with the issue of traditional Hmong *zij poj naim* (marriage by capture). Originally charged with kidnap and rape, the defendant was allowed to plead to a lesser charge of false imprisonment, giving the court leeway to consider cultural issues and tailor a sentence that would both fulfill requirements of the U.S. legal system and protect the Hmong defendant.[2]

In a Colorado case, a battle between a Hmong man and woman over custody of their five children required the judge to grapple not just with the usual divorce issues but also with a different cultural tradition for resolving feuds and preventing violence. Attorneys for the case warned that failure to resolve the case within the Laotian community as well as the Colorado court system could result in a long-standing feud between the paternal and maternal clans that would harm the children. One attorney summarized the difficulty by saying, "Any resolution that does not take into account the parties' cultural background probably would result in violence and tragedy."[3]

Colorado's Justice Information Center was established largely to provide defense services to immigrants. The state's Asian-Pacific Development Center offers cultural awareness training to several of the state's police departments.

The foregoing examples clearly indicate that justice professionals have begun to recognize the importance of knowledge about other cultures represented in American society, and about the legal traditions of those cultures. The justice system is attempting to administer U.S. law with a sensitivity to the integrity and legal traditions of other cultures.

Responses from schools are also needed. Many Asian groups, particularly Indochinese, are unfamiliar with the rights and responsibilities of democratic society. They come from nations torn apart by decades of civil war or from isolated tribal cultures; they often distrust government and representatives of government. Similarly, some Hispanic refugees from strife-torn nations have had little preparation for participation in a democratic society. They, too, may distrust authority. To meet the needs of students from these groups, as well as the needs of our democratic society, teachers must be able to effectively teach understanding and appreciation of the American legal and judicial system while acknowledging, responding to, and integrating the cultural backgrounds and experiences of a diverse student population.

Studying law in the context of other cultures will also have benefits for **all** students. As Isidore Starr has written:

> The study of comparative law can help us break out of our comfortable cocoons of ethnocentrism. Comparing the similarities and differences between our own and other legal systems begs inquiry into the nature of each society – its history, its culture, and its value structure. Contrasting these legal systems invites us to draw up a balance sheet of strengths and shortcomings. We gain new insights into our own institutions

> and processes, and what may once have been a cause for complaint could turn out, in retrospect, to be a blessing in disguise.[4]

Furthermore, as the nations of our world continue to become increasingly interdependent, all citizens will need to understand the cultures, social structures, and political frameworks of other nations. Successful international business transactions, for example, require an appreciation of different cultures and styles as well as the regulations and policies of other countries. When conflict develops, nations must identify their differences in objectives and perceptions in order to find solutions.

While the study of law and society in other nations is valuable, teachers should also keep in mind the following cautions posed by Charlotte Anderson:

> Anyone launching into a study of law and society would do well to keep in mind two factors that could skew one's vision of the society under investigation.
>
> The first is that law never changes in exact harmony with the social institutions it reflects. A good example of this is the whole area of family law in the United States....At any point in time – the law you see will inform you about the society or culture of which it is an integral part *but* is it the society *as it is*, the society *as it was*, or the society as it is *yet to be*?
>
> Just as the nature of law can skew one's perception of reality so does the nature of one's self – the investigator. We human beings are by "nature" culture makers and culture bearers. The culture into which we mature shapes our orientation, our perceptions, and our values. We cannot discard the cultural prism through which we view law in unfamiliar cultural contexts. We can, however, diminish potential ethnocentric bias by continually reminding ourselves that what we see is not "reality," but an interpretation of reality skewed through our own cultural perspective.[5]

A Framework for Comparison of Cultures and Legal Systems

The following outline, developed by Marcia S. Krieger and Hiroshi Motomura, is intended to be used as a structural framework to guide the analysis of legal systems. Not all of the inquiries are applicable to each culture. Some cultures will have more focus in one area than another. Some of the questions or areas of analysis will be totally inappropriate to a particular culture or legal system. Notwithstanding concentrations in one area or deficits in another, we hope these areas of analysis will provide a comprehensive and consistent approach in analyzing cultures and their legal systems and will offer fertile ground for comparisons and contrasts.

I. What is the concept of law in this culture?

A. What is the purpose of law in this culture?
Examples:
(1) Social control.
(2) Protection of competing rights and interests.
(3) Dispute resolution.
(4) Creation of standards of behavior.

B. What is the source of law in this culture?
Examples:
(1) Statutory.
(2) Case law.
(3) Executive order or decree.
(4) Other societal institutions such as church, political party, dominant industry, etc.

II. Who interprets and applies the law in this culture?

A. What is the judicial structure?

B. What types of procedures are used?

C. What types of matters are determined in the formal judicial system?

D. What standard and mode of proof are used?

E. What manner of enforcement is used?

III. What is the role of the cultural/economic philosophy with regard to the formal legal system?

A. Does the cultural/economic philosophy restrict or restrain use of the legal system?

B. Does the cultural/economic philosophy encourage use of the legal system?

C. Is the cultural/economic philosophy consistent or inconsistent with the established legal system?

IV. How are the laws and the legal system implemented – specific applications?

A. Contractual disputes -- rights and remedies.

B. Criminal law and the concept of guilt.

C. Family relations such as marriage, divorce, and control of children.

D. Concepts of property rights and entitlement.

V. What has been the immigrant or sociological experience of members of this culture living in the United States?

This introduction concludes with a lesson that can be used to stimulate student thinking about the relationship between law and culture and the degree to which our legal system should accommodate diverse cultural traditions. The remainder of this publication presents three units on law and culture in three societies represented in the population of the United States: Japan, Southeast Asia (Hmong), and Mexico. Each unit begins with an essay on law in the culture, written from the perspective of an expert whose own background is linked with the culture under study. The essays present personal views, which may not be agreed with by all members of the culture being discussed. Each essay is followed by a set of lessons designed to help secondary students examine issues related to law, culture, and the conflicts that can arise between contrasting legal traditions when immigrants come to the United States.

Endnotes

1. J.A. Meyer, ed., "The Changing Face of America: Special Immigrants Issue," *Time* 126, no. 1 (1985), pp. 26-35.

2. S. Sherman, "The Hmong in America," *National Geographic* (October 1988), pp. 588-610.

3. L. Horsely, "Hmong Couple's Custody Dispute Presents Some Unique Problems," *Boulder Daily Camera* (March 24, 1987).

4. Isidore Starr, "Looking at the Law: Here, There, and Everywhere," *Intercom #100* (1981), p. 5.

5. Charlotte Anderson, "Introduction to Special Issue: Through the Legal Looking Glass," *Intercom #100* (1981), p. 3.

HOW TOLERANT SHOULD U.S. LAWS BE OF CULTURAL PRACTICES?

Introduction:

Our legal culture is important to our identity as a nation because we are not bound together by a common religion, race, history, or geography. This lesson is designed to help students recognize some points of conflict between two important American values – respect for cultural traditions and protection of existing norms through the legal system. Students have the opportunity to consider whether culture should be a defense for practices that violate the Universal Declaration of Human Rights and U.S. laws. The United States takes pride in its history of welcoming immigrants from throughout the world. Because we have a wider mix of religions, languages, races, and cultures than many countries, our system of laws has become an important basis for determining what cultural practices we wish to accept because of our interest in individual freedom and what practices we feel violate the important principles of liberty that are the foundation of our country.

Objectives: At the end of this lesson, students will be able to:

1. Explain that the U.S. legal system is the core of our common culture and that our citizens have different religions, customs, and languages, but that our laws span these differences to bind us together as a nation.

2. Analyze cultural practices from the perspective of the Universal Declaration of Human Rights and U.S. laws.

3. Describe some cultural practices of immigrant citizens that conflict with laws in the United States.

4. Debate the degree to which our legal and judicial system can and should bend to allow for differing cultural customs and still be effective for society as a whole.

Time: 1 class period

Materials: Copies of Handouts 1, 2, and 3 for all students.

Procedure:

1. Introduce the lesson by asking students to articulate the purpose of law – to establish and preserve order within a society and to institutionalize accepted norms of behavior. To provide a context, ask students to consider the Ten Commandments as an influence on U.S. laws. How do U.S. laws reflect our values related to dress, sanitation, private property? Ask students if they can cite other countries' laws or customs that reflect different values related to some of these issues. You may want to share the following quotation from Mark Twain with students as a discussion motivator:

> Laws are coldly reasoned out and established upon what lawmakers believe to be a basis of right. But customs are not. Customs are not enacted, they grow gradually up, imperceptably and unconsciously....Laws can be evaded and punishment escaped, but an openly trangressed custom brings sure punishment....Certainly, then, there can be

but one wise thing for a visiting stranger to do – find out what the country's customs are and refrain from offending them. *Mark Twain.*

2. Distribute Handout 1 and have each student write his/her own responses to the questions. Form small groups for students to compare answers and try to reach consensus on how the conflicts between cultural practices and laws should be resolved in the United States. Summarize their answers on the board. Have students analyze the results by asking: How do students distinguish between what is acceptable elsewhere and what is acceptable in the United States? Discuss where some of the practices outlined might take place. Give students some background on particular practices. Explain that item 6 refers to the internment of Japanese-Americans during World War II. Discuss slavery practices that still exist throughout the world (see *Newsweek*, May 4, 1992).

3. Explain that people throughout the world differ regarding how far the United States or the United Nations should go in forcing countries to adopt what many consider basic human rights. Provide students with Handout 2, which summarizes the U.N. Universal Declaration of Human Rights and the U.S. Bill of Rights. How are the U.S. Bill of Rights and the Universal Declaration of Human Rights similar and different? Which document provides more rights? Focus attention on the wording of the Bill of Rights, which is stated in negatives (i.e., "the government shall not...") while the Universal Declaration seems to be giving advice about what governments *should* do for their citizens.

4. Explain that people called Universalists believe that certain basic rights transcend any particular cultural customs or laws and that countries must be constantly pressured to conform to the Universal Declaration of Human Rights. Others, called Relativists, believe that outsiders should be tolerant of rules, values, and practices that are different from their own. Draw a continuum on the board and ask students how they would define themselves based on the exercise they just completed. You may want to have several students stand along the line to show their positions.

Universalist: Certain rights should apply to everyone at all times.

Relativist: Variations in values and rules are rooted in culture and should not be criticized by outsiders.

5. Ask students if they would change their answer if the practices happened in the United States. Are they more concerned about having U.S. laws applied uniformly than about guaranteeing rights to people around the world? Ask students to consider the case of a newcomer who may be unfamiliar with our laws. Do we have a responsibility to respect cultural differences at the expense of law? Is it our responsibility to strictly and uniformly enforce the law? How should we balance these conflicting interests? Explain that Handout 3 describes cases in which immigrants have brought cultural practices with them to the United States that have conflicted with local, state, or federal laws. Assign each small group one case and ask the students to consider the cases and determine how they think U.S. authorities should respond to the given cultural practices.

6. Have students present their verdicts and arguments in class. What factors influenced their decisions? Share with students the actual decisions and reasoning in these cases (see **Teacher Background Information**). How did the actual verdicts differ from the students' verdicts? What do the actual decisions say about the way our judicial system works?

7. Have students reevaluate their position on the universalism and relativism of the rights that humans have. Does this exercise cause them to reevaluate their position on how laws should interact with culture? How do they see the U.S. society and our legal system being challenged by our country's changing demographics?

Teacher Background Information:

Case 1: The Colorado county district judge admitted that he was stymied by the cultural and language barriers posed by the case. The judge appointed a separate attorney to represent the five children in the custody case. After hearing testimony of all parties, as well as psychologists, the court decided that the custody case should not be settled by the judicial system but by their own people. The case was referred to the Laotian Family Counsel, a mediation group of Laotian and Hmong located in cities where large numbers of Southeast Asian refugees have settled. Charges against the mother for breaking the custody arrangement and leaving the state with her children were dropped, with admonitions that she must familiarize herself with the laws of the state and country where she resides.

Case 2: The California judge dismissed all charges against the Cambodian refugees for misdemeanor cruelty to animals. In his decision, the judge stated that killing an animal for food is not illegal unless done in a cruel way; the evidence did not indicate that the men had inflicted any unreasonable pain on the animal. The judge supported his decision by citing common practice in slaughterhouses and on farms.

Case 3: Yongnian Shi's American host accompanied him to municipal court. The judge and prosecutor listened to Shi's story and agreed to cancel the $20 fine. Later, the chief of police wrote a letter to the American host thanking him for the explanation and saying that, for the officer on duty, a simple warning to Shi would have sufficed. Friends of Shi heard about the episode and bought him a light.

Case 4: When prosecutors learned about the Vietnamese folk remedy for headaches, child abuse charges against the family were dropped.

Case 5: This case is currently being considered by the U.S. Supreme Court (Docket #91-948). The trial court and appellate courts both upheld the right of the city of Hialea to limit the killing of animals as part of religious ceremonies.

Case 6: As a result of the *ifonga*, the Foutuua and Williams families have a very good relationship. The Williams family did not expect the Foutuua family to refuse to testify. The families do not see the ceremony as thwarting the criminal justice system. Courts in Hawaii and California have looked for ways to integrate the *ifonga* into the criminal justice proceedings and serve both systems of justice. While the practice is not uniformly accepted, the courts have "accepted the *ifonga* as a strong cultural tradition of the Samoan community" as part of a plea bargaining process. (For more information on Samoan traditions of justice, order "Justice in America" Lesson 1 #909677 from the CRADLE repository.)

CULTURAL PRACTICES AND THE LAW

Below are listed several customs or cultural practices. Decide whether you consider these practices acceptable in other countries and in the United States. Give reasons for your answers.

1. People eat with their hands rather than with knives, forks, and spoons.

   Under what circumstances, if any, would this be acceptable?

   In another country In the United States

2. Parents decide whom their children will marry.

   Under what circumstances, if any, would this be acceptable?

   In another country In the United States

3. The government provides a free education for some people, but not everyone.

   Under what circumstances, if any, would this be acceptable?

   In another country In the United States

4. People are forced to work at a job against their will and with no pay.

   Under what circumstances, if any, would this be acceptable?

   In another country In the United States

5. Animals are sacrificed in religious ceremonies.

   Under what circumstances, if any, would this be acceptable?

   In another country In the United States

6. During time of war, citizens who emigrated from the enemy country are moved to a remote part of the nation and made to live in special camps due to fears that some may be spies.

   Under what circumstances, if any, would this be acceptable?

   In another country In the United States

Adapted from *Teaching About Human Rights*, by David Shiman (Denver, CO: Center for Teaching International Relations, 1988).

UNIVERSAL DECLARATION OF HUMAN RIGHTS (Abbreviated)

The Universal Declaration of Human Rights sets forth the rights the United Nations thinks everyone should have.

December 10, 1948

Now, therefore, THE GENERAL ASSEMBLY proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms....

ARTICLE 1 – Right to equality.
ARTICLE 2 – Freedom from discrimination.
ARTICLE 3 – Right to life, liberty, personal security.
ARTICLE 4 – Freedom from slavery.
ARTICLE 5 – Freedom from torture, degrading treatment.
ARTICLE 6 – Right to recognition as a person before the law.
ARTICLE 7 – Right to equality before the law.
ARTICLE 8 – Right to remedy by competent tribunal.
ARTICLE 9 – Freedom from arbitrary arrest, exile.
ARTICLE 10 – Right to fair public hearing.
ARTICLE 11 – Right to be considered innocent until proven guilty.
ARTICLE 12 – Freedom from interference with privacy, family, home, correspondence.
ARTICLE 13 – Right to free movement in and out of any country.
ARTICLE 14 – Right to asylum from persecution in other countries.
ARTICLE 15 – Right to a nationality and freedom to change it.
ARTICLE 16 – Right to marriage and family.
ARTICLE 17 – Right to own property.
ARTICLE 18 – Freedom of belief and religion.
ARTICLE 19 – Freedom of opinion and information.
ARTICLE 20 – Right of peaceful assembly and association.
ARTICLE 21 – Right to participate in government and in free elections.
ARTICLE 22 – Right to social security.
ARTICLE 23 – Right to desirable work and to join trade unions.
ARTICLE 24 – Right to rest and leisure.
ARTICLE 25 – Right to adequate living standard.
ARTICLE 26 – Right to education.
ARTICLE 27 – Right to participate in the cultural life of the community.
ARTICLE 28 – Right to social order assuring human rights.
ARTICLE 29 – Community duties essential to free and full development.
ARTICLE 30 – Freedom from government or personal interference in the above rights.

U.S. BILL OF RIGHTS

The U.S. Bill of Rights sets forth the rights with which government cannot interfere.

Passed by Congress, September 25, 1789
Ratified by the States, December 15, 1791

Amendment I: Freedom of religion, separation of church and state, freedom of speech, freedom of the press, freedom of assembly, freedom to petition the government to right a wrong.

Amendment II: Right to keep and bear arms.

Amendment III: Right not to be forced to allow soldiers to stay in one's home in time of peace or in time of war unless procedures described by law are followed.

Amendment IV: Freedom from unreasonable searches and seizures of self, home, papers, and belongings; no issuing of warrants for search or seizure without probable cause.

Amendment V: Right to due process of law when accused of a crime; freedom from being tried for the same crime twice and from being forced to testify against oneself.

Amendment VI: Right to a speedy, public, and fair trial, including a lawyer, when accused of a crime.

Amendment VII: Right to a trial by jury in civil cases with a claim of more than $20.

Amendment VIII: Right to fair bail; freedom from excessive fines and cruel and unusual punishment.

Amendment IX: Guarantee that the listing of rights in the above amendments or elsewhere in the Constitution would not be taken to mean that these were the only rights people had.

Amendment X: Provision that powers not given to the United States by the Constitution or not prohibited from the states would stay with the states or the people.

CASE STUDIES IN LAW AND CULTURE

Case 1

A Colorado county court must decide a custody dispute between a Hmong husband and wife. The case began six months ago when the couple, who had been married for 10 years, separated. At that time, the court placed the five children in the temporary custody of the father, who was then living with his extended family in the same county. The mother was allowed frequent visitation, as established by the court.

Two months after this temporary custody was established, the mother fled with her five children to Minnesota, where her own family lives. After a warrant was issued for her arrest by the Colorado county, the mother returned to Colorado. Speaking through an interpreter in her court testimony, the mother claimed that her children had been abused and neglected by their father and his family; she felt forced to flee with her children to her own family in Minnesota, unaware that she was breaking the law by doing so.

The mother's attorney has argued that the mother's guilt in taking her children to Minnesota must be resolved in the context of Hmong culture and that the judge must understand that Hmong define themselves in terms of their clan. The father's attorney has argued that the father put his faith in the American legal system and had been abiding by the temporary custody arrangement; the father's rights had been violated.

The court must decide on two issues: the mother's guilt in breaking the custody guildelines and the final custody arrangements for the children.

How do you think the judge should rule on these two issues and why? Present a verdict and an explanation for your decision.

Case 2

A California county judge must rule on a misdemeanor charge of cruelty to animals against two Cambodian refugees. The two refugees, both in their thirties, admitted to killing a German sheperd for food. They said that eating dog meat was a common practice in their country and that they had no idea that killing a dog for food would be illegal in the United States. Penalty for the misdemeanor charge is a fine and/or up to one year in jail.

How do you think the judge should rule on this case and why? Present a verdict and an explanation for your decision.

Case 3

While riding his bicycle home from English class in the early evening, Yongnian Shi, a visiting researcher from the People's Republic of China, was stopped by a police patrol car.

"You had better have a light; it's better for your safety," the officer said. He then issued a ticket. The ticket seemed a fearful thing to Shi. Shi explained to the officer that in China, where bicycles are the principal means of transportation, a night light is optional. The officer replied that if Shi had something to explain, he could do it in court. This order was equally fearful to Shi: if the Chinese government calls someone to court, it is a very serious matter. Shi did appear in court on the traffic violation.

How do you think the municipal court judge should decide on this case? Present a verdict and an explanation for your decision.

Case 4

The customary folk remedy for headaches among some Vietnamese is to massage the back and shoulders with the serrated edge of a coin. This practice leaves bruises that are easily recognizable by children's teachers.

A teacher noticed bruises on the shoulders of one of her Vietnamese students and called in social workers to investigate for child abuse. Teachers and social workers are obligated to follow the law and investigate any allegation of child abuse. The social worker filed child abuse charges against the Vietnamese family.

How do you think the court should rule on this case? Present a verdict and an explanation for your decision.

Case 5

The U.S. Supreme Court must decide whether the U.S. Constitution's guarantee of religious freedom gives worshipers the right to sacrifice animals in ritual ceremonies. The Miami suburb of Hialeah enacted a law to stop Caribbean immigrants from killing chickens, pigeons, doves, ducks, goats, sheep, and turtles in the practice of an ancient religion called Santeria. The religion originated in Africa and is widely practiced in Nigeria today. The religion was brought to the Caribbean by slaves and remained underground for 400 years. Cuban refugees brought the religion to the United States in the early 1960s.

The Church of Lukumi Abaalu Aye argues that the city and the state of Florida permit the killing of animals for many secular reasons (i.e., food, recreational hunting and fishing) so the ban on religious ceremonial sacrifice as practiced by Santeria followers is wrongful government infringement on its religion. The minister says that his religion should be institutionalized as other faiths have been so that its practitioners can become part of mainstream America. In Florida, his defense claims, religion is almost the only unacceptable reason for killing an animal.

How do you think the U.S. Supreme Court should rule on this case and why? Present your decision and an explanation for it.

Case 6

Anosau Foutuua, a Samoan immigrant, was stabbed to death outside the door of his home in Hawaii by Tonny Williams, also a Samoan. Williams was charged with murder and jailed until his trial. Tonny Williams' family responded to the crime by initiating an ancient traditional Samoan ceremony called an *ifonga*. In this ceremony, two Samoan high chiefs (one of whom was Tonny's father) went to the Foutuua family home covered with treasured Samoan fine mats and gifts of food, money, and handicrafts. Through the ceremony, the Williams family placed themselves at the mercy of the Foutuua family and asked for forgiveness. The Foutuuas accepted the offer and gave something in return. They agreed that they would not testify against Williams at his trial. The prosecuter's office was not pleased about this decision. Without the eyewitness account of the stabbing, Williams would serve about ten years in prison rather than a life sentence.

Should the U.S. legal system recognize the *ifonga* as a legitimate form of handling criminal cases when both parties are Somoan? Why or why not?

Law and Cultures

JAPAN

This unit opens with an essay that introduces Japan's legal tradition from the context of history, culture, and values. The essay was written by Hiroshi Motomura, associate professor of law at the University of Colorado School of Law. The essay is followed by four classroom lessons designed to introduce students to law and legal issues in Japan. Lesson 1 sets a cultural context by introducing Japanese cultural values related to individualism, group identity, and social harmony. Lesson 2 further explores social values, particularly as they affect dispute resolution in Japan. In Lesson 3, students consider how culture has molded the juvenile justice system in Japan. They formulate solutions to legal issues involving juveniles and compare the juvenile justice system, and the philosophy behind it, to that of the United States. Lesson 4 looks at the role of the police in Japan and the United States – police authority and responsibility in maintaining law and order, as well as their relationship with the communities in which they work.

The final lesson in the unit focuses on law in a cross-cultural context. Through a case study, students consider the legal and social dilemmas that can be created when the legal and/or cultural traditions of two countries collide. The lesson revolves around the case of a Japanese woman living in the United States who, by following a Japanese traditional ritual, violates U.S. law and must stand trial for murder. Through a mock hearing, students focus on a very real legal dilemma in the United States today: whether differing cultural values and norms constitute a defense for breaking the law. Students analyze the tension in and challenge to our legal and justice systems of enforcing a standard of behavior while still respecting the cultural diversity that is a hallmark of this country.

LAW IN JAPAN, LAW AMONG JAPANESE-AMERICANS: AN INTRODUCTORY ESSAY*

by

Hiroshi Motomura

Like most writing by lawyers, this essay begins with disclaimers. This is just a modest attempt, first, to set forth and briefly discuss some of the most important characteristics of law and the legal system in Japan. It also attempts to identify some variables in the effects that Japanese law and the Japanese legal system may have on attitudes toward law among contemporary Japanese-Americans. Neither inquiry is simple, and combining them into one interrelated analysis adds some complexities. It is possible to provide some generally valid insights into these questions, but I will need to be very selective about the focus of my observations. In particular, I will concentrate on the overall relationship between law and culture, providing examples and details that seem called for, but will not try to present a comprehensive view of the vast body of Japanese law.

The Japanese Concept of Law

Western Influences on Law in Japan

As the popular press is very quick to remind us, Japan is, in some very important senses, where East meets West. The casual Western visitor to Japan is struck immediately by the proliferation of what is familiar and even tiresome – McDonald's and Kentucky Fried Chicken, American music, all of the latest National Football League memorabilia. Yet the Japanese people are often quick to point out that all of this is mere outward appearance, that they still maintain their special, very Japanese way of doing things.

Law in Japan is similar – a rich and sometimes perplexing amalgam of Western and Japanese influences.[1] The Western influences in turn come from several sources; it would be inaccurate to point to any Western legal culture as the dominant foreign influence on Japanese law. The primary Western influences during the period before the Second World War were European, mainly French and German. This was the period during which the Japanese adopted European-style codifications of private law. These codes covered core areas that would roughly correspond to the American law of contracts, torts, property, family law, and wills and trusts.

The Japanese adopted not only many of the legal rules from these European codes, but also their way of categorizing and organizing these principles. This explains why a Japanese lawyer and a German lawyer, for example, would find much common conceptual ground between them, yet talk about the law in language that would be difficult for American lawyers to understand: the Japanese and German lawyers would speak, for example, of the law of obligations and delicts, rather than contracts and torts.

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Since 1945, the sources of Western influence have shifted somewhat, with the legal system of the United States playing a much greater role than before. One obvious reason for this change was the Allied Occupation. During the immediate postwar period, the American authorities were relatively content to leave intact most (but not all) of the prewar private law, with its concepts and rules of largely European origin. The most important exceptions were changes to some aspects of family law and the law of inheritance that had favored males, particularly first-born sons, and disfavored females. But in areas of public law, especially constitutional law, the Americans had a large influence on the shape of the postwar legal order in Japan.

Apart from the Occupation, a second, less obvious reason for the growing influence of American law is the leading role that the American legal system has played worldwide in dealing with many of the problems associated with a complex, mobile, interdependent society – among them environmental problems, civil rights, and economic regulation. Since the New Deal, the United States has pioneered a wide variety of complex regulatory schemes that have been emulated throughout the world.

American legal innovations have influenced Japan as much as they have any other country, perhaps more than any other. Indeed, law probably has been America's number one export to Japan during the five decades since the Second World War. The extent of this American influence is understandable if we remember that throughout most of the postwar period, Japanese culture in general looked up to the United States for projects, ideas and approval, and that the independent-mindedness embodied in the recent Japanese bestseller, *The Japan That Can Say NO*, is a relatively new development.

Purposes and Sources of Law in Japanese Culture

As with Japanese culture in general, the typical pattern in Japanese law is a Western outward appearance – whether a European-inspired and organized contract law or an American-influenced constitutional law or antitrust law – that masks what is largely a hidden Japanese reality. Legal rules may be (and usually are) written so that they are outwardly similar or identical to Western law, but the practical reality of that written test and its real influence on daily activity in society are often different, sometimes radically so, from those of their counterparts in a Western legal system and Western society.

One key difference goes a long way to explain why Western legal rules can be used so differently in Japanese law and society. In the West, and certainly in the United States, we generally accept the idea that the legal systems should treat transactions or disputes by applying rules of universal application. We derive some comfort from the idea that all business tranactions, for example, are governed by the principle that a valid contract should not be breached, and if it is, then the breaching party must pay something to the aggrieved party. With some exceptions, our contract law does not permit variations based on ad hoc determinations about whether enforcement of the contract seems "right" under the circumstances. Such "circumstances" might include the parties' past and future dealings, their ability to absorb financial loss, and other factors that are legally off the mark but intuitively are not totally irrelevant.

In spite of the recent popularity of dispute resolution outside the formal litigation process, Western culture, particularly American culture, is profoundly suspicious of approaches to law that amount to allowing someone in a position of authority simply to decide what "feels right" under the circumstances. Put differently, we in the United States take some pride in believing that we are a government of "laws, not men." At some fundamental level, this view of law rests on a strong sense of the individual and individual rights. "Rights" belong to an individual, and she can rely on them in planning her interactions with others in society. She should be able to do so without fear that the sand will shift beneath her and some elder or judge will decide that asserting an apparently well-established right in a particular setting is "just going too far."

The dominant Japanese view of law is different enough to make the relationship between law and culture different.[2] Much Asian law, including Japanese law, derives its legitimacy within its own society from the idea that it does what is fair in the particular context. Sometimes, this means applying the legal rules as written or as interpreted by courts in similar situations, much as in the West. But often, this means modifying the rules, or not applying them at all.

In a contract dispute between a rich person and a poor person, the parties' past and future dealings, as well as their ability to absorb financial loss, might play a much larger role in the outcome than those factors would play in the American legal culture. As this view of law clearly implies, the Japanese have a different sense of individualism and individual rights. To use American terms, "rights" in Japan may be "undercut," precisely because the Japanese insist less on individual rights, rely less on formal legal rules, and place a higher value on the most harmonious solution even if rights are not "vindicated."

Interpreting and Applying Law in Japan

The foregoing is intended as an extended caveat to the following discussion of the formal legal system in Japan. The court system, judges, and lawyers all interpret and apply the law in Japan, but as I shall first explain, their role is much narrower than in the United States. I will later turn to the obvious next question – if the formal legal system does not have this power, who does?

Courts, Judges, and Lawyers

Courts. Much like the United States and most other industrialized democracies, Japan has a multitiered system of courts.[3] Formal litigation goes initially to one of a number of courts of first instance (what we would call "trial courts"), some of which have specialized jurisdiction (for example, Family Court), others of which have general jurisdiction over all disputes that do not fit into one of the special courts. The losing party may seek review in an appellate court, and further review by the Supreme Court of Japan is also possible. The courts work with their own precedents, and with statutes that are enacted by an elected legislative branch. The statutes must be consistent with a written Constitution. One major difference between the courts in Japan and the United States is that we, unlike the Japanese, have separate systems of federal and state courts, but this difference is not especially important for the themes presented in this essay.

Judges. Ordinary Japanese judges are career judges who, unlike American judges, begin to serve as judges as soon as they complete their formal legal training. They start by hearing minor matters, often in some remote locale. They hope to advance gradually, in the familiar civil service pattern, through a succession of posts of steadily increasing responsibility and prestige. In contrast, American judges generally obtain their offices through appointment by a political benefactor. This usually occurs at a relatively advanced stage of their careers in law, in recognition of their professional accomplishments (and to some extent of their political affiliations).

The difference in career patterns between Japanese and American judges leads to significant differences in professional self-image and, in turn, judicial decisionmaking. Japanese judges are above all civil servants who understand that adherence to the established patterns of decision is the best way to advance. More fundamentally, the Japanese judge recognizes that exercise of truly independent decisionmaking power represents a breach in the esprit de corps of the Japanese judiciary as a collective body. The emphasis, then, is on a cautious, conservative approach to the judicial function – judges say only what is necessary to decide the case before them, and in so doing they will follow the course that others have already set for them.

This pattern softens a bit as we progress up the ladder through the appellate courts, and indeed extraordinary cases have moved some judges to render courageous and path-breaking decisions. But

the general expectation contrasts sharply with the American system. Even though in theory the Supreme Court of Japan has the same power as our Supreme Court to strike down legislation as unconstitutional, in fact it has done so on less than a handful of occasions since the Second World War.

Lawyers. By the time they begin practice, Japanese lawyers have received legal training that is roughly equivalent to an American lawyer's.[4] But legal training in Japan differs from American legal training in several significant ways. As with courts and judges, the overall point is that the role of Japanese lawyers in society is much smaller than that of their American counterparts, with a corresponding reduction in the role of formal law.

Law as a field of study consistently attracts huge numbers of students at Japanese universities, and those students enroll in courses that sound like courses at American law schools. But very few Japanese law students even aspire to become lawyers, and an even smaller number will actually do so. Law is first and foremost an undergraduate discipline in Japan, and those who study it consider it to be a liberal arts education. Graduation from a respected law faculty virtually assures employment with a respected employer, not so much because of one's "training" in law or in any practical sense of the word "training," but rather because one has proven oneself as belonging to an elite group by passing the rigorous university entrance examination.

The students' expectation, then, is to use their law degrees as tickets into prestigious companies or government agencies, where the real training takes place on the job. Obviously, this pattern of education and employment works better in a society, like Japan, in which lifetime employment with one employer is still the general expectation. Once employed, their tasks may include some legal work, as is inevitable in modern business or government employment. Some may do what we would consider "legal work" without being members of the bar, often in the legal department of government agencies or private companies. But most Japanese law graduates will perform only occasional legal work, and they will do so standing shoulder-to-shoulder with colleagues who never studied law at all.

In short, "legal education" at Japanese universities bears little functional resemblance to legal education in this country, in which the almost universal expectation of American law graduates is to pass the bar examination, and the overwhelming majority eventually does so. Of course some American law graduates never become lawyers, and some leave the profession later to pursue other careers. But the clear focus of American legal education is to train lawyers.

The number of Japanese law graduates who attempt to pass the Japanese bar exam is very small. For those who try, the pass rate is truly daunting—one to two percent. The average new lawyer has passed the bar on about the sixth or seventh attempt, a statistic that has caused considerable concern that the exam is testing too much for staying power (financial and mental) rather than achievement or aptitude. In a nation of 120 million, only 500 pass the bar exam each year. Those who pass attend a two-year training institute, where they receive a more professionally oriented course of study. Upon graduation they can choose to become judges, prosecutors, or lawyers in private practice.

Effects on the Role of Law. These training and career patterns among Japanese judges and lawyers have significant effects on the role of law in Japanese society. On the one hand, the number of Japanese who have had legal training by virtue of graduation from the law faculty of a Japanese university is quite large. Being widely dispersed and generally well-placed in leading positions in government and industry, this group might be expected to raise the overall awareness of law throughout Japanese society. But as long as that legal training is considered a liberal arts education rather than professional training, the effect will not be to raise formal legal consciousness in Japan. The group that could contribute to an American-style legal awareness is the corps of practicing lawyers, but their numbers are extremely small. There is a small number of judges, which means that formal litigation is very time-consuming. And, as in the United States, the attorney's fees can be a substantial obstacle.

In sum, Japanese legal culture includes formidable institutional barriers to ordinary Japanese citizens who might wish to view their daily transactions and disputes in formal legal terms. The shortage of judges and lawyers in Japanese society creates (or continues) a relatively low level of "rights" consciousness. The shortage and the low level of "rights" consciousness combine, in turn, to create an atmosphere throughout Japanese society in which citizens ordinarily expect both transactions and disputes to be handled without necessarily relying on lawyers, nor on the adversarial mind-set that often arises when lawyers become involved.

Law Outside Formal Law: Where's the Power?

The foregoing discussion of Japanese courts, judges, and lawyers should tell us something very basic about our own American legal system. Our courts, judges, and lawyers represent a very heavy concentration of power in society. In this country, those who have private disputes can engage lawyers and go to courts and judges. Similarly, those who have disputes of a more public nature – pollution, discrimination, or school segregation, to name just three examples – go to court.

In none of these cases can the litigants have full confidence that the outcome will be favorable. In fact, they cannot be completely sure that the formal legal system will actually render a decision at all, since the possibility of settlement will become increasingly attractive as time passes (and attorneys' fees pile up). But we in the United States take for granted that resort to the formal legal system is natural, and that judges and lawyers have the power to deal with disputes ranging from the most private spats to exceedingly complex public issues.

In Japan, it is different. Resort to the formal legal system is more of a last resort. Courts, judges, and lawyers are not seen as having the power that we take for granted in the United States. Instead, that power remains concentrated elsewhere. In searching for that power, we can identify two places in which it remains concentrated. The first is the administrative branch of government, which for lack of a better term we can call the "bureaucracy." The second consists of informal structures such as the family, the neighborhood, and the workplace.

Bureaucratic Power. Recent developments in Japanese law provide several illustrations of the link between the Japanese legal system's relative lack of power and the maintenance of bureaucratic control.[5] Industrial policy provides a good example. In the United States, one aspect of national industrial policy is a set of laws, known as antitrust laws, which are designed to promote competition.

The Department of Justice can bring civil or criminal action against those who have engaged in certain anticompetitive conduct – bid-rigging or other forms of price-fixing, for example. But American companies or consumers who believe that they have been hurt by such conduct are not dependent on the government; they can take matters into their own hands and sue in court to recover three times their actual damages. The creation of this "private right of action," together with the ready availability of lawyers eager to take these cases, makes private antitrust litigation an important part of our industrial policy, even if it is often unpredictable.

Japan has antitrust laws modeled after United States antitrust laws, but they are largely unenforced.[6] In theory, they permit private suits to recover for damages suffered as a result of anticompetitive activity, but courts demand such a high standard of proof of damages in such suits that as a practical matter they cannot be brought. In reality, government officials, most prominently those in the Ministry of International Trade and Industry, informally consult with manufacturers, suppliers, and exporters, and adopt "guidelines" by consensus. These guidelines in effect allocate market share, distribution patterns, and even prices. The key word is "informal"; almost everything is accomplished without even rising to the level of a "decision" that might be concrete enough to be the focus of public criticism or legal challenge.

In other areas of law, the Japanese government has responded in similar ways to litigation involving broad social problems, such as environmental pollution and gender discrimination in employment. The government has reacted to the possibility of a growing role of the formal legal system by coopting litigation. Typical responses have been to preempt litigation by appointing committees to study the problem, to encourage legislative solutions, or to create an entirely new agency for the job. All of these responses have set severe limits on the role that the formal legal system—courts, judges, and lawyers—can play when similar cases arise in the future.

Other Informal Structures. The same pattern—absence of power in the formal legal system and a corresponding alternative power center elsewhere in society—also gives (or leaves) power to informal structures, including the family, the neighborhood, and the close business community. The entire area of contract law illustrates the power of relationships in the business community. As I have mentioned, Japanese and European contract law are similar in outward appearance. And the basic outcomes under rules of Japanese, European, and American contract law are also roughly similar, though there are some differences in the analytical route that lawyers and judges in each system might travel to reach the similar results.

More fundamentally, however, the formal rules of Japanese contract law play a different role in Japanese commercial life. What counts is the buyer and seller's long-term relationship, which is as much a human connection as a commercial one. This has several interrelated consequences, all of which tend to diminish the significance of formal rules of contract law.

First, an actual contract is at bottom simply an agreement to negotiate in good faith about whatever might come up during the course of the relationship. Detailed provisions dealing with a myriad of contingencies are unnecessary, and even worse, might be seen as evidence of fatal mutual distrust. Second, insistence on one's "rights" under a contract is considered not only hypertechnical, but also counterproductive as it undermines the long-term reputation and relationships that are necessary to commercial success. It might be only a slight exaggeration to say that many Japanese view some contracts as a form of marriage.

Because the formal rules of contract law play only a small role in commercial reality, the formal legal system plays only a small role. Significantly, the jury system, which is one important way in which the American legal system brings a similar sense of "rough justice" and community values to contract law, is not part of the Japanese legal system. In the United States, the seventh amendment to the Constitution requires jury trials in many civil cases, but Japanese law knows no such requirement.

The Question of "Litigiousness." One basic issue that lurks in the preceding discussion of the formal legal system's reduced role in Japan is whether and to what extent the Japanese people are "litigious." Many observers, including leading Japanese legal scholars, have argued that Japanese are by nature not very litigious, that they ordinarily tend to favor a reduced role for formal law in favor of government beneficence, commercial trust, and conciliatory, nonadversarial modes of dispute resolution.[7]

Other observers suggest that we are witnessing not evidence of the Japanese national character, but rather the success of deliberate efforts by controlling elements of Japanese society to limit access to formal law.[8] Put differently, this second school of thought contends that the Japanese are forced to be nonlitigious, whether they like it or not.

My own view is that these two views are not necessarily mutually exclusive. The relationship between law and culture is very subtle. Japanese culture, at least at some point in history, may well have always included some aversion to the formal legal system. Indeed, the same might be said for all preindustrial societies, including Western ones. But it is probably also true that Japanese government policies have reinforced those aspects of Japanese culture by knowingly making it difficult to rely on formal law.

Law Among Japanese-Americans: The Immigrant Experience

Everything that you have read so far has been about law in Japan, and not necessarily about law among Japanese-Americans. Now we need to consider the immigrant experience, in contrast to the culture that exists in Japan as the country of origin, and ask whether and to what extent the Japanese legal culture explains the legal culture of the Japanese-American community.

The Japanese-American immigrant experience is a complex phenomenon, and unsurprisingly, books have been devoted to it.[9] To be honest, I am not certain if we can adequately describe something called "the legal culture of the Japanese-American immigrant community." If we could, it certainly would have links with the legal culture in Japan. But the nature and extent of those links vary widely within the Japanese-American community. I will confine myself here to identifying several different perspectives from which to examine how law in Japan and the Japanese-American immigrant experience might have combined over the past one hundred years.

A first perspective is that the immigrants in this country may have left the country of origin so long ago that the influence of present-day culture in the country of origin is diminished. Much Japanese immigration to the United States, for example, took place long before the dramatic changes in Japanese society since the Second World War. To be sure, many of the fundamental understandings of Japanese society remain close to what they were at the turn of the century, and Japan is much less Americanized than a casual visitor to Japan in 1990 might infer. But one only needs to spend some time with Japanese young people to see that they see themselves as having grown up with somewhat different cultural assumptions from those that their parents grew up with.

A second perspective on the immigrant experience is that different groups of Japanese-American immigrants have had different experiences with this country's majority, white-Anglo culture. The earliest settlers (the "Issei," or first generation), who came to this country in the last part of the 19th century and the early years of the 20th century, did not especially try to assimilate into American society. In large part, this must have been because they were too closely tied to the old country to want to assimilate. Another important reason was that they knew that racial prejudice meant that they could not assimilate.

Outward assimilation was more evident in their children (the "Nisei"). But this became the generation that the government forcibly uprooted and placed in internment camps during World War II. Their children, the third generation (or "Sansei"), have grown up in an atmosphere of generally diminishing obvious racial prejudice (at least toward Asians of Japanese origin). Many in this and the fourth generation ("Yonsei") seem to value some cultural separatism more highly than their parents did, though the high rate of intermarriage is strong evidence to the contrary.

This brief, oversimplified sketch covers only the three generations of those families who had immigrated by 1924, when Congress placed a ban on Japanese immigration that was to last several decades. But postwar Japanese immigration represents a distinct further wave, which has its own unique characteristics with respect to the issues of assimilation and separatism. Other factors complicate the analysis, among them the generally rising economic position of Japanese-Americans, as well as the majority culture's often-manipulative use of Japanese-Americans as a "model minority."

Overall, my best guess is that the Japanese-American culture, in spite of its history of relative assimilation, maintains some strong cultural ties (below the surface but not that far below) with the basic attitudes that are part of the legal culture in Japan. By and large, Japanese-Americans have become psychologically and materially comfortable enough in American society to accept the role that the formal legal system plays in this country, and perhaps even to take that role for granted. But at the same time I would guess that Japanese-Americans would not find the limited role of formal law in Japan to be as foreign as most Americans would find it.

Endnotes

1. For further reading on Western influences on Japanese law, I recommend Yosiyuki Noda, *Introduction to Japanese Law*, translated by Anthony A. Angelo (New York: Columbia University Press, 1976), pp. 41-62; Hideo Tanaka, *The Japanese Legal System* (New York: Columbia University Press, 1976), pp. 163-253. Throughout the rest of this essay, I will cite sources primarily in order to recommend further reading for those who wish to dig deeper; I will not attempt to provide comprehensive or exhaustive documentation.

2. See generally Noda, op. cit, pp. 159-83; Tanaka, op. cit., pp. 254-443.

3. See generally Noda, op. cit., pp. 119-38; Takaka, op. cit., pp. 444-548.

4. See generally Noda, op. cit., pp. 139-56; Tanaka, op. cot., pp. 549-620.

5. The best discussion of these issues is Frank Upham, *Law and Social Change in Postwar Japan* (Cambridge, MA: Harvard University Press, 1987).

6. See generally J.M. Ramseyer, "The Costs of the Consensual Myth: Antitrust Enforcement and Institutional Barriers to Litigation in Japan," *Yale Law Journal* 94 (1985), pp. 604 +.

7. See, e.g., Kawashima, "Dispute Revolution in Contemporary Japan," in *Law in Japan: The Legal Order in a Changing Society*, Arthur von Mehren, ed. (Cambridge, MA: Harvard University Press, 1967); Chin Kim and Craig Lawson, "The Law of the Subtle Mind: The Traditional Japanese Conception of Law," *International and Comparative Law Quarterly* 28 (1979), pp. 491-513.

8. See, e.g., Haley, "The Myth of the Reluctant Litigant," *Journal of Japanese Studies* 4 (1978).

9. An excellent source, devoted to many different Asian-American groups, is Ronald Takaki, *From Different Shores* (New York: Oxford University Press, 1989).

1 THE INDIVIDUAL IN JAPANESE SOCIETY

Introduction:

This lesson, which includes a reading/lecture, discussion, and dilemmas, assists students in understanding the Japanese value of societal or collective welfare. Students recognize Japan's cultural emphasis on individual duties and responsibilities rather than individual rights and freedoms. The lesson provides a foundation from which students will consider the role of law in Japan.

Objectives: At the end of this lesson, students will be able to:

1. Compare and contrast the cultural values and concepts underlying the individual's role in society, as expressed in American and Japanese proverbs.

2. Analyze and apply a set of "rules" or values for getting along in Japanese society.

3. Appreciate the importance of collective welfare and individual duties and responsibilities in Japanese society.

4. Hypothesize how a long cultural tradition that emphasizes the collective welfare over individual well-being would influence the legal guarantee of individual rights in Japan.

Time: 1 class period

Materials: Copies of Handouts J-1 and J-2 for all students.

Procedure:

1. Write the following proverb on the chalkboard:

The squeaky wheel always gets the grease. (Western)

Ask students to explain what they think this proverb means. Students should note that the proverb implies that one must speak up, be assertive, or make himself/herself noticed to get what he/she wants or needs. Ask students to comment on what they think the proverb reflects about the role of the individual and/or the value placed on individual wants and needs in our society.

Handouts J-1 and J-2 and portions of the teacher background explaining these two handouts are reproduced from *How to Get Along in Japanese Society*, by Professor Judith Berling (Bloomington, IN: Midwest Program for Teaching About Japan, Indiana University). Developed by the author for a series of teacher workshops.

2. Next, write the following proverb on the chalkboard:

The nail that sticks up gets hammered down. (Japan)

Again, ask students to explain what they think the saying means. Students should be able to explain that in this case, calling attention to one's self is seen as a negative trait; one who calls attention to himself or herself is put back in place, made equal with the rest. What do students think this proverb reflects about the role or value of the individual in Japanese society? How does this view compare with the Western view reflected in the previous proverb?

3. Distribute the **Teacher Background Information**, Part A, as a brief reading, or present the information through an introductory lecture. Main points to emphasize from the reading are the Japanese traditional emphasis on the collective good rather than individual good, and the resulting emphasis on individual duties and responsibilities rather than individual rights. Students should recognize a distinct contrast between this social orientation and the relationship between the individual and society as a whole in the United States.

4. Distribute Handout J-1. Explain that, while no list of rules can convey the complexity of a society, this hypothetical list of simple rules reflects real Japanese social values and principles that the Japanese use to guide their social interactions. Read through and discuss each rule with the class, using the **Teacher Background Information**, Part B, to inform and guide discussion.

5. Once students understand the set of rules, divide the class into five small groups, distribute the five situations in Handout J-2, and assign one situation to each group. Each group will read the situation and decide how it would be solved, using the "rules" to support their decision.

6. Ask each group to report on its situation and how it was resolved, citing the rules it used to make its decision. The **Teacher Background Information**, Part C, provides the probable solution to each hypothetical situation.

7. To extend the lesson, have the class or small groups generate a parallel set of rules for getting along in American society. How did the rules they created differ from the Japanese rules? How would the situations be resolved in the United States?

8. Close the lesson by having the class refer to the two proverbs. Do the Japanese rules provided in this activity reinforce the message of the Japanese proverb? How or how not?

Given this social orientation and values, would students expect Japan to have a strong political/legal tradition of individual rights and freedoms? Ask students to explain.

Teacher Background Information:

Part A: Basic Values in Japanese Society: Collective Vs. Individual Welfare; Individual Duties Vs. Individual Rights

Collective rather than individual well-being is a fundamental principle or value in Japanese society. Group needs and welfare are perceived as more important than individual needs or wants. To the Japanese mind, an individual's sense of identity – his very legitimacy as a person – is tied to his membership in and work towards the goals of the groups to which he belongs, be they family, company, school, or nation.

This emphasis on the collective good in Japanese society may be tied to traditional notions of the Japanese as a national family all descended from an original emperor; to the economic and social pressures and demands of a population living so closely together in a small geographic space; and to Confucian principles of social cooperation and order.

A corollary to this ideal of collective welfare is a social emphasis on individual duties and obligations – what people can and should do to promote the general welfare – rather than individual rights and freedoms. Individual rights and freedoms are, by definition, selfish and self-serving; they require one to put his or her own needs before those of the group. As such, they may often be counterproductive to group welfare.

Part B: Explanation of the Rules for Getting Along in Japanese Society

For Rule 1: The Japanese sense of self does not rest on the individual but on the social self, as a member of an ongoing family line, a resident of a village, a worker in a company. They see the Western view of the individual as rootless, lonely, and depressing. They want to be part of an ongoing human stream. This is our most fundamental problem in understanding the Japanese, for our notions of self-fulfillment and happiness are excessively individualistic, and we see risking loneliness or unpopularity in a noble cause as the highest of human activities. The Japanese would see the highest good as being able to convince the group to recognize the moral demands of life.

For Rule 2: Social pressure in Japanese society supports the traditional values. Since they do not put self-fulfillment first, it is natural that they should dissuade "wrong-headed rebels" who are threatening to give up the all-important sense of belonging for some individual whim that may not prove very satisfying. The young and restless are counseled to be patient and maintain their ties with family, friends, and work until their point is seen and understood, if ever. The cost of alienation is simply too great to risk for some "selfish" purpose, and they do not want the person to end up lonely and bitter.

For Rule 3: Each person, depending on his or her place in society, has certain obligations and certain modes of behavior expected of him/her. So long as he/she fulfills these rules, he/she belongs and is accepted. Far from seeming oppressive, these rules give the individual an easy way of belonging. Contrast this with American society in which there are very few rules, and belonging (especially to family and/or peer group) depends on intangible feelings, sense of compatibility, and so on. The Japanese find American society very difficult, because one is never sure when one belongs, or exactly what is expected.

For Rule 4: The life-time employment system in Japan offers great security for the individual. Once you are hired, you are "safe," and you need not worry about belonging. Likewise, family and social ties are much more enduring in Japan; friends are friends for life. The cost of alienation from family or friends is much higher. A "healthy" individual is expected to remain part of the same group for life, and he/she feels great acceptance in having this stable group of old friends and family.

For Rule 5: This rule states the concept of "face." "Face" is the person's reputation for integrity. However, when one loses "face" by an unacceptable social act, the loss of "face" is not merely the person's shame, but it also reflects on his group, and in particular on the leader responsible for the group. The group and the leader are responsible for that person's behavior. This group responsibility not only determines group culpability, but it means that the group and the leader take much more responsibility for guiding the member's behavior than in our culture; a team member is not just a member because of a "contract," but rather the group works together to give each other guidance and support.

For Rule 6: This value comes from Japan's feudal tradition, and it represents one aspect of the reciprocal relationship involved in the strong loyalty to group and superiors expected in Japanese society. It is not a matter of loyalty to an arbitrary dictator; the burden of the leader is very heavy. He is very responsible for the action and character of those under him. An error by an underling is ultimately his responsibility, and he must assume public responsibility for it. To prevent such disasters, the Japanese leader understandably takes a strongly paternalistic interest in those under him.

For Rule 7: Japanese society is hierarchical, and the levels are determined by age and seniority. Again, the Japanese view of the individual determines this. In the Western sense, competition on the basis of individual ability and achievement makes all the sense in the world, since our society seeks to maximize fulfillment of each individual according to his capabilities. However, if group identity and belonging are more important than individual success, then you want the rules for "advancement" not to undermine the sense of team solidarity, the sense of mutual trust and belonging. Thus, you try to minimize competition within the group, while maximizing the success of the group as a whole. If one knows that one will belong to the team for life, and will benefit from team success, it makes less difference how long it takes to get to the top, or whether one is recognized as a "star."

For Rule 8: Here again we confront our Western difficulty in dealing with the Japanese concept of self. We tend to believe that groups (family, offices, country, etc.) should be organized to allow individuals maximum freedom to pursue their interests, ambitions, dreams, and ideals; if we are "held back" by job or by friendships, we will tend to counsel people to leave them behind, take a risk, and "follow their star," to do *what's best for them*. In Japan, some people do this, but the cost has traditionally been very great – one is cut off from friends and family; people tend to see one as selfish and unduly ambitious; there is nowhere to turn when one is done. The best parallel, perhaps, is our reaction to someone who would betray friendships, use people, and step on anyone in his way to succeed. It is not that Japanese do not dream dreams, but that they are very aware of the cost in loneliness and suffering.

For Rule 9: The Japanese family is not just the living members, but all of the ancestors and descendants; it is a family line. They will thus be very loathe to gamble the family wealth (land, business, etc.) in a venture that is the dream of one individual. They want to insure a future, not just for the next generation, but for many generations. Likewise, a business will be suspicious of short-term solutions to problems; they will ask workers and management to make more sacrifices for the long-term. (A good example is the lower take-home pay of Japanese workers, who accept certain benefits in place of salary benefits, to insure the expansion and strength of the company.)

For Rule 10: Because of our concept of individuality and individual fulfillment, we tend to see life as "the individual against the system," and we calculate how to play the rules of the system so as to get the most for ourselves. In Japan, because the concept of self is more social or group-oriented, it *is* more satisfying to work for group fulfillment. They don't feel that they are making some tragic sacrifice in subordinating individual interests for group interests; they feel an enormity of sacrifice when their individual interests drive them to alienate themselves from a group.

Part C: Resolutions of the Situations

1. Yoshi should remarry and work in the lumber company. He has obligations to his family to provide descendants, and to the family business to keep it prospering for posterity. Note: For Yoshi, having brothers who could step in and carry on the family line would be another matter; he still might be under family pressures to carry on the business, but if he persisted they would probably give in, provided another son was able to carry on. They might even give him some money to get his car dealership going, if that investment did not threaten the family's long-term prosperity.

2. Mr. Hirai will not support the promotion of Midori over her coworkers for a number of reasons. To begin with, most of business is, as Thomas Edison said of genius, "1 percent inspiration and 99 percent perspiration." A manager's primary function is to make sure that people work well together. This is particularly true in Japan. Midori's talents have been identified as artistic, not managerial. Furthermore, Japanese sex roles are clearly and narrowly defined. There are talented women, strong-willed women, and ambitious women in Japan (just as there are everywhere else), and such women are hard to hold back, but the Japanese ideal of youthful femininity includes submissiveness and not dominance. Men are expected to dominate women and in most circumstances would find it very difficult to be subordinate to a woman. Mr. Hirai will not wish to introduce such tensions into his work group unnecessarily. Finally, most Japanese women expect, and are expected, to get married and quit work in their mid-twenties. Mr. Hirai too will expect Midori to leave soon. He fears a promotion would only disrupt her friendship with coworkers while she remains on the job. Furthermore, a promotion might make her appear too aggressive or self-assertive and, therefore, undesirable as a marriage partner. Mr. Hirai hopes to help Midori by introducing her to a suitable young man. In sum, while he may wish to acknowledge Midori's excellence, he will feel that a promotion is not the way to do it and will support the promotion of a man. (It should be noted that many Japanese corporations have a two-tiered hiring system. Only men are hired as regular employees. All women are hired as temporary employees and are not entitled to standard pay raises, benefits, etc. In such a company Midori could not be considered for promotion.)

3. Takashi will join Yamamoto Machine Tool, the more personal (some might say more paternalistic) company. The Japanese regularly choose to invest their work relations with complex emotional ties, often of a family-like nature. Japanese generally prefer working arrangements that go beyond a strictly contractual exchange of labor for money. Japanese national surveys show that more than three-quarters of the respondents would rather have an employer who showed a personal interest in them, even if he demanded extra work. A similar number of people say they would accept lower wages in exchange for a family-like atmosphere with outings and sports days.

4. Not only would the principal ask the teacher to publicly apologize and resign, but he himself would resign because he is responsible for his teachers. He would take responsibility on himself. His resignation might not be accepted, but it would be expected.

5. He would marry a promising young man to one of his daughters and *ask the young man to take his family name*. In other words, the man would not only be his son-in-law, but his adopted son. Thus, all of their children would have the family name and could carry on the family line.

RULES FOR GETTING ALONG IN JAPANESE SOCIETY

1. You are a team member. When the team wins, you win. When the team loses, you lose. (You are a member of several teams – family, village, place of work, country.)

2. Team members must obey the rules of the team, or they will be "benched." Their teammates expect them to "play fair," or they will not associate with them.

3. Team members are expected to play their role faithfully and perform their function for the team.

4. You cannot switch teams; you belong to a team for life.

5. If one team member makes a mistake or gets into trouble, it ruins the reputation of the entire team. It is not simply his/her mistake. Thus, team members will work together to try to avoid all mistakes.

6. The team leader is responsible for the whole team; he assumes *public* responsibility for their errors. They, in turn, are personally responsible to him. Since no one is expected to change teams, the team leader cannot simply "get rid of" a bad player; he must work very hard to build a first-rate team with the players he has.

7. First, second, and third string are determined by age (seniority). People of the same age are on the same string, and they "move up" together. This promotes internal cooperation and teamwork, rather than jealousy and competition to "get ahead."

8. The best rewards in life are for good team work. Individual success may be nice, but it is not shared and does not increase one's sense of belonging to the team. Individual success is permitted as long as it does not threaten one's commitment to the team and one's solidarity with team members.

9. A team is defined not only by its present members; it has a tradition. It includes all players of the past, and potential players of the future. The short-term success of the moment is never allowed to endanger the built-up reputation of the team, or its possibilities for future success. Thus, the team not only wants to win this game and this pennant, but – most importantly – to prepare for the best possible record over the long term.

10. Team spirit requires the good will and total commitment to the team of all its members. They cannot make a show of team spirit while secretly thinking only of themselves.

SITUATIONS

1. Yoshi is the only child of a wealthy family that owns a lumber company. His wife, whom he loved dearly, died in childbirth just a year ago. He has no desire to remarry; he loved his wife too much. Taking another wife would seem an insult to her memory. However, his parents want him to marry again, because they want a grandchild to inherit the lumber company. Actually, Yoshi does not like the lumber business. If he had his way, he would move to Tokyo and become a car dealer.

   What would Yoshi do? Support your decision with the rules you have.

2. Mr. Hirai is chief of the design department in a large company that manufactures ready-to-wear clothing. He takes a deep interest in all his employees and feels a responsibility for their personal contentment as well as for the smooth functioning of his department. The group of five men and three women who entered the department together three years ago have finished their period of internship. The time has come for one of them to be promoted to subsection chief. In informal discussions among the supervisors, one of the young woman, Midori, has been noted as having unusual talent in design. Not only does she have excellent design skills, but it has become clear that she is able to anticipate fashion trends. Midori's fashion sense might be very profitable for the company.

   Would Mr. Hirai promote Midori? Support your decision with the rules you have.

3. Takashi is finishing his last year in trade school, where he is learning to be a machine tool operator. He received offers from two small companies for jobs following graduation but is not sure which to choose. Hirano Tool and Die pays better. Mr. Hirano expects a good day's work for his money, but he does not press employees into extra services. Mr. Hirano certainly does not try to interfere in people's personal lives. When the work day is over, everyone is free to lead his own life. At Yamamoto Machine Tool, on the other hand, the wages are not as good, but there are a number of special benefits like an annual company outing and a company baseball team. Mr. Yamamoto frequently takes workers out for dinner and drinks, although it is very difficult not to go even if you would rather not. While Mr. Yamamoto frequently asks employees to work late or give up vacation days, even when there are rules against it, he is equally likely to bend rules to help a worker who has personal problems.

   Which company would Takashi join? Support your decision with the rules you have.

4. The seventh-grade teacher, Sato Sensei, used some extremely offensive language in the classroom. The shocked students told their parents, who have come to complain to the principal, Mr. Tanabe.

   What would Mr. Tanabe do? Support your decision with the rules you have.

5. Mr. Akiyama, founder of a number of successful restaurants, has no sons to inherit his empire, only three daughters.

   How would Mr. Akiyama go about ensuring an heir? Support your decision with the rules you have.

2 CIVIL DISPUTES IN JAPAN

Introduction:

Japan is a society in which people identify with and seek to get along in groups. The Japanese are often characterized by both Western and Japanese analysts as valuing group harmony and seeking to avoid open disagreements. In this activity, students explore the roots of these cultural characteristics, consider mechanisms of dispute resolution in Japan, and apply information through role plays.

Objectives: At the end of this lesson, students will be able to:

1. Identify important social principles and norms in Japanese society.

2. Analyze how these principles and norms operate in maintaining social harmony and resolving social conflict.

3. Discuss the relationship between social organization, cultural values, and law in Japanese society.

Time: 1-2 class periods

Materials: Copies of Handouts J-3, J-4, J-5, and J-6 for all students.

Procedure:

1. Distribute Handout J-3 and ask students to read the "Introduction" and "Guiding Principles of Japanese Social Relationships." The reading may be completed during class or as homework. Upon completion of the reading, lead a discussion on Japanese social organization. What values are important in Japanese society? Why are they important? Ask students to define the notions of *giri*, *ninjo*, and *wa* in their own words. Are these notions similar to/different from values that operate in our society? Elaborate. How do the principles of *giri*, *ninjo*, and *wa* help keep Japanese society functioning smoothly?

2. Have students complete the reading on "Civil Disputes." Discuss why the Japanese might prefer to solve disputes through conciliation rather than formal litigation. How compatible is conciliation with other Japanese values students have studied?

3. Distribute Handout J-4, and discuss each guideline with students.

4. Next, divide the class into groups of three or four. Distribute Handout J-5, assigning each group to focus on one of the cases outlined. Groups should answer the questions at the bottom of the handout and prepare a role play that illustrates the dispute resolution process and solution they think would occur in each case.

5. Allow class time for groups to present their role plays. Elicit class reaction to each role play. Did the role plays reflect adherence to important social principles in Japan? Did the process and solution seem realistic in the context of Japanese society and values?

6. Distribute Handout J-6, an actual case of litigation reported in a 1983 issue of *Time* magazine. Ask students to explain the case in light of what they have learned about Japanese social values and attitudes toward the formal legal system. Does the final resolution of the case surprise them? Would a similar resolution be surprising in the United States? If so, why? Consider the same case in a U.S. context to explore American values and attitudes about dispute resolution and the role of law in that process.

JAPANESE ATTITUDES ABOUT LAW

> "To an honorable Japanese, the law is something that is undesirable, even detestable, something to keep as far away from as possible. To never use the law, or be involved with the law, is the normal hope of honorable people."
>
> – Noda, *The Far Eastern Conception of Law*

Introduction

Japanese attitudes toward law have been molded by traditional social values and attitudes. These social values, in turn, have been fostered, in part, by Japan's physical and historical circumstances. Until the mid-1800s, Japan was a rural nation. Rice was the mainstay of the country's agricultural economy. Rice cultivation was labor-intensive, requiring cooperative effort by whole families and groups of families. The labor demands of rice cultivation fostered the development of a stable agricultural village society in Japan, with villages composed of families who worked the land together generation after generation. Within this environment, social relationships clearly were very important, personal, and enduring.

From this environment, unwritten rules of social interaction and behavior designed to protect these important relationships developed. These rules were guided, in large part, by the social philosophy of Confucianism. Imported from China, Confucianism appealed to the Japanese because of its reverence for nature and its effort to find in nature models for the man-made world.

In the Confucian view, the world of nature follows certain immutable laws. Everything in nature is a piece contributing to an ordered whole. Things in nature cannot exist alone; they exist only as a component of the whole, dependent on other things around them. As such, everything has a proper place in relationship to everything else.

Confucianism taught that, in the orderliness and smooth-functioning of the natural world, lay a model for achieving order in human society. Just as the elements of the natural world cannot exist alone, neither can humans. The individual is part of a social body. In this respect, he can be likened to part of a molecule rather than an isolated atom. An individual's identity and importance come from his contributions to various relationships.

Guiding Principles of Japanese Social Relationships

The Japanese identify three guiding principles of social relationships and, by extension, society as a whole. These are *giri*, *ninjo*, and *wa*.

Giri. All relationships, and the social order as a whole, are guided and protected by *giri*, an unwritten set of rules of conduct. *Giri* is perhaps best defined as reasonable behavior one person should exercise towards another within the context of a particular relationship. Focusing on the relationship rather than the individuals who comprise it, **giri emphasizes responsibilities and obligations to others with whom one shares a relationship.** Put in the context of a relationship between "you" and "me," *giri* describes any sense of what I should do and how I should act to maintain a good relationship with you. *Giri* implies that I will define my behavior by what is best for our relationship.

Ninjo. Relationships engender obligations. But these obligations should be seen as joyful, not burdensome. *Ninjo* describes the attitude and emotion with which the obligations and responsibilities of *giri* must be carried out. *Ninjo* can best be defined as a spirit of affection, warm-heartedness, or humanity with which duties are performed and relationships maintained.

Wa. *Wa*, or harmony, is the goal of society and all human relationships. If people adhere to *giri* and *ninjo* in all their interactions, *wa* will result.

Civil Disputes

In Japan, where society idealizes harmony, it is expected that disputes will seldom arise. If they do arise, the goal for those solving the problem is the restoration of harmony and thus the preservation of essential relationships.

The principles of *giri*, *ninjo*, and *wa* all underscore the personal, emotional and flexible aspect of social relationships for the Japanese. The Japanese perceive such social values at odds with written law, which, by definition, is objective, inflexible, and impersonal. In light of *giri*, *ninjo*, and *wa*, the Japanese tend to see written law as cold, mechanical, and artificial in a world where problems are best resolved by following a natural course.

Litigation. To the Japanese, the very nature of a lawsuit violates the ideal of harmonious relationships. Lawsuits pit one party against another, creating a situation in which it is difficult to feel *ninjo*. Lawsuits result in a winner and a loser; the parties walk away enemies. In such a solution, the goal of harmony is lost and the relationship between the two parties is sacrificed.

Given the philosophy underlying their social relationships, it is not surprising that the Japanese resort to litigation much less frequently than citizens in Western countries. The number of civil suits per capita in Japan is estimated to be 4 to 10 percent that of Western countries. To the Japanese, entrance into a lawsuit is admission that warm feeling and sense of responsibility – the essence of the relationship – have broken down. Such an admission is one of failure and brings with it humiliation and shame for those involved.

Moreover, lawsuits have repercussions which extend beyond the two disputants and the disintegration of their relationship. According to one Western observer:

> Only matters of the greatest personal or family importance could induce the Japanese to seek the assistance of the courts in the solution of a dispute, and then only after they had exhausted all other means of settlement. Public disputes between community members are disapproved (especially) if the breach is so conspicuous as to draw the attention of neighboring communities and thus expose the (community) to shame and ridicule. Such affairs challenge both the reputation and the cohesiveness of the community.
>
> – J.I. Clark, ed., *Japan: Peoples and Cultures*.

Conciliation. Despite a cultural aversion to them, disputes do arise in Japanese society. When they do, they are usually settled out of court. Conciliation, mediation, and compromise are perceived as better-suited to the spirit and value of *giri*, *ninjo*, and *wa*. Disputes are viewed as the result of parties having deviated from *giri* and not fulfilled their responsibilities. As a result, harmony is lost. To restore harmony, both parties have to be protected. Each side must feel that they have been heard and understood. Conciliation provides for both parties to have a role and share responsibility for the resolution. The process allows room for emotion and flexibility and attends to the particulars of the relationship at stake. *Ninjo* is critical to the conciliation process. Each side must have a warm-heart and concern for the other party for conciliation to work.

The conciliation process is generally conducted in one of several ways in Japan. Parties may seek reconciliation directly and completely outside of the judicial system. In this case, parties meet, confer, and reach a mutually acceptable resolution. Or they may seek the mediation of a third party whom they both trust. Conciliation may also be sought through the justice system. The Conciliation of Per-

sonal Affairs Act and Law for Conciliation of Civil Affairs provide the guidelines for conciliation within the judicial system. Even within these formal guidelines, the Japanese judicial system reflects the central importance of relationships, emotion, and flexibility. According to these acts, "The main object of conciliation lies in reaching a solution to a case based upon morals and with a warm heart."

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GUIDES TO DISPUTE RESOLUTION, JAPANESE STYLE

1. Relationships, not individuals, are the social unit in Japan. A person derives his identity from his roles in various relationships – as family member, neighbor, friend, co-worker, employer, etc. *Wa* – harmony – is the goal of all relationships and society as a whole.

   Disputes reflect disharmony. They threaten the very essence of society – relationships – and should be avoided at all costs.

2. *Giri* – an unwritten code of behavior – guides all social relationships. *Giri* encompasses the duties and obligations one person has to another by virtue of their relationship.

   Disputes result when one person or the other has deviated from *giri* – that is, failed to honor obligations to the other.

3. The obligations of a relationship are joyful, not burdensome. *Ninjo* – warm-heartedness, humanity, benevolence – is the attitude and emotion with which the obligations and duties of a relationship are carried out.

   In a dispute, *ninjo* guides each party to consider the other person's feelings so as not to cause embarrassment or loss of face. To directly threaten, attack, or humiliate the other person would permanently damage the relationship.

4. Disputes must be resolved in ways that insure the preservation of the relationship. There can be no winner or loser because this would fundamentally change and damage the relationship.

CASES

1. Mr. Iwamoto works the 11:00 p.m. to 7 a.m. shift at the factory. He sleeps at home from 10 a.m. to 5 p.m. The Kuraishi family, who lives next door to Mr. Iwamoto, owns a small dog. Each day, when Mrs. Kuraishi goes to do her shopping, the dog is alone in the house and barks, waking Mr. Iwamoto and keeping him awake for about an hour. This situation has been going on for several months. Mr. Iwamoto is increasingly concerned because he feels that he is not alert at his job.

2. The Yamaguchi family owns a restaurant one-half block away from an auto repair garage where mechanics are often working on car engines. The exhaust and machinery fumes fill the air. Customers at the Yamaguchi restaurant complain of the noise and odor. Lately, business at the restaurant has declined sharply and Mr. Yamaguchi believes it is due to the pollution from the garage.

3. One day, Mrs. Imada, an older woman, was walking home from the store wheeling a small, portable grocery cart. Neighborhood children, riding their bicycles on the sidewalk, zoomed by Mrs. Imada. The Suzuki boy's bicycle caught Mrs. Imada's cart, causing her to fall and her cart to tumble. The children helped Mrs. Imada with her things and she went home, after scolding them to be more careful. When she got home, she complained to her son and daughter-in-law of pain. They took her to the doctor, where she was diagnosed as having a broken hip.

4. A college student rented a small apartment during the school year. At the end of the year, he moved back home with his family for the summer, leaving behind a very messy apartment and many pieces of damaged furniture. The landlord estimates the repairs and cleaning at $700.

For each case:

1. Define the relationship that exists between the parties.

2. Identify the source of disharmony or dispute.

3. Prepare a role play of a meeting between the parties to resolve the dispute. The meeting may involve a third party.

THE YAMANAKA CASE

Mr. and Mrs. Yamanaka asked their neighbors to babysit for their three-year-old son, Yasuyuki, one Sunday. The neighbors took Yasuyuki to the beach with them for the afternoon; while there, he accidentally drowned. The Yamanakas sued their neighbors for negligence resulting in the death of their child. The Yamanakas won their case in court and were awarded $24,100 in damages. But the Yamanakas became public pariahs. They received hundreds of phone calls shaming them not only for taking money from their neighbors but even for bringing suit against them. Less than a month later, the Yamanakas went back to court to return the money and drop the case.

Source: *Time* (August 1, 1983), p. 65.

3 JUVENILE DELINQUENCY AND THE FAMILY COURT SYSTEM IN JAPAN

Introduction:

This activity focuses on the juvenile justice system in Japan. Through reading, discussion, case studies, and role plays, students explore how juvenile offenders are categorized and treated in Japan. The activity assumes some knowledge of juvenile justice in the United States and may be used to complement such a class unit. The activity may also be enhanced by using a community resource person knowledgeable about juvenile justice.

Objectives: At the end of this lesson, students will be able to:

1. Discuss key features of the juvenile justice system in Japan.

2. Analyze the philosophy and goals of juvenile justice in Japan.

3. Compare and contrast issues of juvenile delinquency and justice in Japan and the United States.

Time: 1-2 class periods

Materials: Copies of Handouts J-7, J-8, and J-9 for all students.

Preparation: A juvenile justice professional from your community may be invited to participate as a resource person.

Procedure:

1. Assign the background reading on juvenile justice in Japan, Handout J-7, for class or homework. When students have completed the reading, ask them to identify and discuss the key steps in the judicial process. Using the juvenile justice resource person as a discussant, consider with students similarities and differences in the way juvenile offenders are categorized in Japan and the United States. How does the philosophy of dealing with juvenile offenders compare? How do the powers of the various actors in the judicial systems compare?

2. Divide the class into pairs or small teams of students. Distribute Handout J-8, assigning each group of students the task of analyzing the cases according to the questions provided on the handout.

3. Discuss each case in class. How far in the system did students think each case would go? Did groups agree or disagree, generally, on the settlement of the cases?

4. To extend the activity, students may role play cases 1 and 5, as outlined on Handout J-9.

5. Ask students to identify one or two cases that might have been resolved differently in the United States. Ask the resource person to comment on probable solutions to such cases if they occurred in your community. What differences in the two juvenile justice systems are indicated by these different settlements? Ask students to hypothesize about what problems or unexpected situations they think a

Japanese exchange student to the United States might encounter if he or she got in trouble with the law here.

Answer Key for Handout J-8:

1. Lawbreaking Child. The repeat offender would be sent to family court. Because he is a repeat offender, the court would probably choose to conduct a hearing, to impress upon the youth and his family the seriousness of the crime. He would probably then be dismissed. The other youths, first offenders, might be severely scolded by the police, then released. If they were especially rowdy or resistant to the police lecture, the police might decide to call in their parents and the school authorities to discipline the youths.

2. Juvenile Offender. Police would probably give students the benefit of the doubt but escort them to the school and lecture them and their homeroom teacher and principal, who they would consider to share responsibility for the students. The homeroom teacher would feel obliged to take on additional responsibilities of supervising and disciplining the students to make sure such behavior did not recur.

3. Juvenile Offender. Laws have been broken and property damaged. The students' case would be turned over to the district prosecutor, who would investigate the charges and turn his findings over to the family court. The family court would conduct interviews and investigate family and personal history. Depending on findings, the court would dismiss the case before or after a hearing.

4. Juvenile Offender. Although the youths would be classified as youthful offenders, the police would probably choose not to pursue the case. The young men would be lectured sternly about the dangers to them and others of such behavior, then let go. Again, if the young men were resistant or hostile, police would choose to involve their parents and the school authorities.

5. Pre-offense Juvenile Offender. Police would turn the case over to the district court prosecutor and the family court. Because of the repeated nature of the alleged crimes, the youth would be interviewed and tested. Extensive information on his family would be gathered. Depending on findings from this investigation, the youth might be dismissed following a hearing, which would include his family, or he might be placed on conditional probation for six months.

6. Police would probably consider this a minor offense of a very young person. Police would probably lecture the boy, escort him home, and talk to his parents about the problem. Police would also lecture the parents on the seriousness of such a trend if it continued and emphasize their duty to discipline their child.

7. Again, this is a minor offense. Police would lecture the youths on the importance of their studies, the reflection of such behavior on their families, and so on. If the youths appeared apologetic, police would let them go. If police met resistance, they might talk to parents and school authorities.

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JAPAN: JUVENILE DELINQUENCY AND THE FAMILY COURT SYSTEM

Juvenile Crime in Japan

The Japanese are proud of their low crime rate, which has decreased steadily since the end of World War II. However, although the overall crime rate in Japan has been decreasing, crimes by juveniles, age 14-19, have been rising slightly since 1972. Although the rate is still low – about 11.8 juvenile arrests for every 1,000 juveniles as of 1975 – the trend is still of concern to the Japanese. The majority of serious crimes committed by juveniles are thefts – usually motorcycle, bicycle, automobile, and shoplifting. These crimes are characterized as "crimes for enjoyment" – thrill seeking or impulse crimes – rather than "atrocious" crimes such as murder, robbery, arson, or sex crimes. Police investigations of these crimes have shown that the majority are committed by youths who seem to have normal personalities and come from homes that are average or above average financially.

The Juvenile Justice System

In Japan, the term juvenile refers to anyone under the age of 20. The Japanese have a special system to deal with juveniles in trouble with the law. The philosophy, purpose, and process of the juvenile justice system is set forth in the Juvenile Law of 1948 and the family court system.

The juvenile justice system emphasizes the *protection, education*, and *rehabilitation* of young offenders. According to the Juvenile Law of 1948, the purpose of the juvenile justice system is to further the sound upbringing of juveniles, carry out protective dispositions relating to the character correction and environmental adjustment of delinquent juveniles, and take special measures with respect to the criminal cases of juveniles and adults who are harmful to the welfare of juveniles.

The Juvenile Law of 1948 also created three categories of juvenile delinquents:

- *Pre-offense juvenile*: A young person who is susceptible to committing criminal acts because of poor family environment or other factors.
- *Juvenile offender*: A person between the ages of 14-20 who has committed a criminal offense.
- *Lawbreaking child*: A person under the age of 14 who has committed a criminal offense.

The Japanese government has established an independent national court system for the exclusive purpose of handling juvenile and family matters. It is called the family court. Proceedings of this court system are less formal and more flexible than the national district court system, which handles all adult crimes. In keeping with the philosophy expressed in the Juvenile Law, the family court is more concerned with identifying appropriate treatment for offending juveniles than in following a strict process to determine guilt. Family court proceedings are called hearings rather than trials. These hearings are closed to the public and no media coverage is allowed.

The Judicial Process for Juvenile Delinquents

The judicial process for juvenile delinquents may involve as many as three steps or as few as one step, depending on the severity of the crime and the category of the offender. The main participants in the judicial process include the police, the procurator, and family court professionals, including probation officers and a judge. While disposition of the problem through the juvenile justice system revolves primarily around the offender, his family and school may also play a key role in the case.

Step 1: The Police. The police represent the first interaction between the legal/judicial system and the child. Every police station in Japan has a specially-trained juvenile unit, which usually consists of several male police officers and several female civilians, called "mama police." The focus of the juvenile unit is not detecting crime but preventing it and deterring delinquency. The method employed by the juvenile unit is called "street guidance" – vigilant patrolling of shopping malls, parks, train stations, or other places where youth gather.

The juvenile units of the police take different courses of action depending on the seriousness of the behavior involved. For minor misbehavior, the police can warn and advise the juvenile and send him or her on his or her way, or they can notify parents, teachers, and school administration, issuing them recommendations for disciplining and correcting the behavior of the child. Family and school are the primary groups to which the youth belongs, and thus are considered to shoulder major responsibility for disciplining and correcting the behavior of the child.

For significant juvenile cases, the police are allowed, by law, 72 hours to investigate. When they have collected the necessary information, they proceed according to the category of the offender.

- *A pre-offense juvenile* may be dismissed to the responsibility of his parent or teacher; he may be sent to a child guidance center (e.g., social services – temporary shelter, foster care) However, most pre-offense juvenile cases are sent directly to family court even though the individuals haven't actually committed any offense.
- *Lawbreaking children* cases are sent directly to family court; police have no discretionary power in the disposition of such cases.
- *Juvenile offender* cases are referred to the district court prosecutor.

Step 2: The Prosecutor. The district court prosecutor has a very limited role in the juvenile justice process. His responsibility and authority are limited to conducting a second investigation to determine if charges are warranted. The prosecutor must then turn the case over to the family court. The prosecutor has no discretionary power in the disposition of juvenile cases.

Step 3: Family Court. The main actors in the family court are probation officers, who conduct a full investigation of the case, and the judge, who determines the final disposition of the case. Probation officers are trained in the social and behavioral sciences. They administer psychological and aptitude tests to the juvenile; interview the offender and his family; and investigate family, social, educational, employment, and criminal history. The probation officer prepares an extensive personal, family, and social profile that the judge will use in determining the disposition of the case.

The family court judge has broad discretionary authority in determining how a case is disposed. The judge has nine options:

- *Dismissal without a hearing.* This unofficial treatment reflects the court's desire to avoid labeling a child as delinquent, if at all possible. It also reflects the juvenile justice system's emphasis on the positive influence and critical responsibility of primary groups to which a child belongs – family and school – in rehabilitation. About one-half of all juvenile justice cases are resolved in this manner.
- *Dismissal following a hearing.* This course of action reflects much the same reasoning as the more informal dismissal without a hearing. A hearing may be conducted to make an impression on the youth and his or her family and to provide more opportunity to counsel the individual involved. About one-third of all cases that reach the family court are resolved in this way.
- *Conditional probation.* The youth is placed in the custody of a court probation officer so that he or she can be studied more carefully. A final decision on the case is made after carefully observing the youth over a period of six months or a year.

- *Probation.* The youth is assigned a probation officer who serves as a role model. About 6-9 percent of the cases are resolved in this manner.
- *Remand to a child guidance center.* In this case, the youth and his or her parents must go for counseling and therapy by doctors, psychiatrists, and/or social workers at one of the nationally-run child guidance centers.
- *Commitment to a child education and training home.* This course of action is generally used for children under the age of 18 who have been neglected. Commitment length is usually not set, but juveniles are generally released after they have completed junior high school.
- *Commitment to juvenile training schools.* The purpose of juvenile training schools is rehabilitation, combined with academic education and vocational education. There are categories of juvenile training schools for different age brackets of offenders – primary, middle, and advanced – and one category – medical juvenile training schools – for delinquents who also have mental or physical handicaps. About 3 percent of all juvenile cases are resolved in this way.
- *Commitment to juvenile prison.* Juvenile prisons emphasize a work regimen combined with academic or vocational training.
- *Referral for prosecution in district court.* Offenders over the age of 16 who have committed offenses punishable by death or imprisonment are referred to the prosecutor and the district court for trial as adults.

CASES IN JUVENILE DELINQUENCY AND THE FAMILY COURT SYSTEM

Each case below describes a situation in which a Japanese juvenile has gotten in trouble with the law. For each situation, decide

- What category of juvenile delinquency the youth(s) would fall under.
- How far the case would go in the judicial system – e.g., to the police, the prosecutor, or the family court.
- How the case would be decided or settled.
- Why the case would be settled in that way.

1. In Japan, public vending machines sell everything from cigarettes and soft drinks to beer, sake, and adult magazines. A small group of seventh-grade students are caught by police buying beer from one of the many vending machines around the local train station. The students are too young to legally buy beer. The police recognize one of the boys as a repeat offender.

2. Two high school students are stopped and questioned by police for taking bicycles from the bike rack at the subway station near their school. The students claim they were just borrowing the bikes for a ride and planned to return them later in the day.

3. Student protesters from the university are picked up by police for disturbing the peace. One student is identified as having thrown rocks and painted slogans on public buildings at the university.

4. Two 19-year-olds racing their cars on a public road are caught by police.

5. A 16-year-old boy is identified by three neighborhood women as the youth that grabbed their purses and pushed them down on their way home from shopping.

6. A shopkeeper notices a 12-year-old passing by a parked bike, the baskets of which are filled with shopping bags. As the child passes by, he takes one of the shopping bags. The shopkeeper calls the police, who apprehend the child.

7. Pachinko is a kind of pinball that is very popular in Japan. Pachinko parlors are common in every town. Because betting is permitted and prizes are awarded, children under the age of 18 are not allowed in pachinko parlors. The juvenile unit, on a street guidance outing, notices a group of young teenage boys and girls loitering outside the local pachinko parlor.

ROLE PLAYS IN JUVENILE JUSTICE AND THE FAMILY COURT SYSTEM

For case 1 on Handout J-8, role play a meeting between the juvenile unit of the local police headquarters and the youth who has been caught buying beer for a third time. Use information from the background reading to guide your role play.

Roles:

police officer
police mama
teenage offender
teenager's mother and father
teenager's father
teenager's teacher

For case 5 on Handout J-8, role play a family court hearing to determine what action will be taken towards the boy accused of purse snatching. Use information in the background reading to guide your role play.

Roles:

teenager:	Speak about your reasons for committing the offenses, how you feel about the crimes now, and about your personal and family background.
teenager's family:	Speak about your family situation and your child's role within it.
probation officer:	Present information you have collected about the offender, his family, his school life, and any other relevant background information.
judge:	Weigh all the evidence presented and make a decision on how to treat the offender, based on the philosophy and goals of the juvenile justice system.

4 THE ROLE OF THE POLICE IN JAPAN

Introduction:

Students begin this activity by considering the role of the police in maintaining law and order in Japan and by analyzing the relationship between the police and the community in law enforcement. They then consider similarities and differences between the power, authority, and responsibilities of the police in Japan and the United States and, through this comparison, identify important social values operating in each country.

Objectives: At the end of this lesson, students will be able to:

1. Identify the duties and responsibilities of police in Japan.

2. Compare and contrast the relationship between the police and community in Japan and the United States.

3. Consider how individual rights and protections and the public good are balanced in different societies.

Time: 2 1/2 class periods (1/2 class period followed by 2 full periods)

Materials: 30-minute video, *Diary of a Police Post* (available on loan from SSEC or for purchase ($100) from TeleJapan USA, 964 Third Avenue, New York, NY 10155 212/980-5333); copies of Handouts J-10, J-11, and J-12 for all students.

Preparation: This lesson will be enhanced by the use of a police officer as a classroom resource. Strategies for incorporating a police officer into the lesson are provided in the procedure section.

Procedure:

1. Ask students to define as well as they can the job of the police. What function do they serve in society? (Enforce the law, maintain order, and so on) How do police execute their jobs? Do students think that police serve a comparable function in all societies? How or how not? What do students think is the relationship between the power and authority of the police and crime rates in different societies?

Explain that in this lesson, students will examine the role of the police in Japan, a very modern, industrialized society with a very low crime rate. Students will be identifying characteristics of law enforcement and crime control in Japan that may contribute to its low crime rate. They will also compare the role of police in Japan and the United States and, in so doing, try to identify similarities and differences in cultural values and norms in the two countries.

2. Distribute Handout J-10 to all students and ask them to complete the reading for homework. As they read, students should record adjectives that describe a good police officer in Japan, and adjectives that describe the desired relationship between the police and the public in that country.

3. Debrief the homework reading by asking students to share their impressions of the relationship that exists between Japanese police officers and the public. Based on the reading, students should emphasize community cooperation and trust, positive relationships between the police and the public, and so on. Next ask students how this high level of cooperation is achieved by the police. From their reading, students should be able to identify the tendency of Japanese police to downplay the use of force or wielding of authority, the status of police as moral role models, low incidence of police brutality or corruption, and so on.

4. Remind students of the notion that Japanese society consists of "teams," introduced in Lesson 1. Why are teamwork and team identity important notions in Japanese culture? What were some of the rules of getting along on a team that students explored in Lesson 1?

Next, ask students to consider the reading on the Japanese police, especially the operation of neighborhood *kobans* or police boxes described in the final paragraphs of the reading. Based on what they have read, would students consider the Japanese police and the neighborhood people they serve to work together as a team? How so? (Students should be able to identify the emphasis on group over individual goals and interests, the emphasis on cooperation.)

5. Introduce the video *Diary of a Police Post*, which chronicles a day in the life of a Japanese police officer on his neighborhood beat. Note that students should be able to see specific examples in the video of many characteristics of the Japanese police and of the cooperative relationship between the Japanese police and the community about which they have just read. As students watch the video, they should make a list of every aspect of the policeman's job and of his relationship with the Japanese citizens that causes them to be *envious* of Japanese society, particularly given Japan's very low crime rate. Invite a police officer to join the class in watching the video and conducting the remaining activities in the lesson. Ask the police officer to record the same items—things he or she envies as he/she watches a day in the life of a Japanese police officer.

6. After the viewing, share students' lists and the police officer's list, creating one that represents the group's ideas about the Japanese police and their relationship with the community that caused envy. (For example, the class might note the virtual absence of guns in Japan, very high success rates for solving crimes, police know their neighborhoods very well and have personal relationships with the people, citizens seem very honest and eager to help solve crimes, and so on.) Discuss whether students and the police officer envied similar characteristics.

7. Next, create a second list by asking students and the guest officer to identify anything they saw in the video that would bother them as U.S. citizens. For example, to focus on the importance Americans place on privacy from governmental interference, ask students if they think Americans would be comfortable with the police knowing so much about individual citizens? If they would be comfortable with the police making regular house calls? Keeping detailed records of the neighborhood residents? How do students react to the use of surveillance cameras throughout Tokyo? What American concepts of rights underlie these values? Ask the guest police officer to comment on whether he or she would legally be allowed to do some of the things the Japanese officer does routinely. If the American officer feels limited, how and why?

8. Discuss whether the Japanese on the video were bothered by the strong police presence. Ask students to draw on what they know about group values in Japan to explain why Japanese citizens might not be bothered by what U.S. citizens might consider government intrusion into their lives. How might underlying values of group cooperation and harmony depicted by the citizens and the police contribute to low crime rates in Japan?

9. Ask students to summarize how the role of police in Japan and the United States reflects cultural values important in each society.

10. Distribute to all class members Handout J-11, which contains police rules, Japanese- and American-style. Ask students to read individually through the rules once, noting similarities and differences. Conduct a class discussion of similarities and differences, asking the police resource person to elaborate and comment on his or her experience with the American rules. Do the police officers in one country seem to have more flexibility or discretion than in the other? How so?

11. Divide the class into eight groups, assigning each group one of the dilemmas in Handout J-12. For their assigned dilemma, the group is to decide the extent of the police's authority in each country and how they will actually enforce the law. Students should support their courses of action with references to the police rules of conduct. Alternatively, the class may be divided into 16 pairs, with each pair considering one case from only one perspective – either American or Japanese. Ask the police officer to circulate from group to group to advise and check for understanding.

12. Have groups share their solutions in class. The answer key provides probable solutions for the cases in Japan. Ask the guest officer to offer solutions to the cases if they happened in the United States, based on his or her experience.

13. Debrief the activity by asking students to summarize the roles and responsibilities of police in the two countries. What trade-offs do they see as Americans in the Japanese system? Do they think the Japanese would perceive these same trade-offs? Why or why not? How does each system reflect and support broader cultural values and norms? Do students think there is a logic between each system and the culture in which it developed? Could any aspects of one system be transplanted successfully to the other culture?

Answer Key for Handout J-12:

1. Police in Japan are very familiar with the neighborhood they serve. They consider one of their most important duties to be vigilance. They would certainly think the man out of place and suspicious and would feel justified in stopping and questioning him solely on this basis. The tone of the police encounter would be inquisitive but friendly. Police would try to determine the man's identity and home and whether he was up to any mischief in the neighborhood. The man would probably also be cooperative. If the police saw no problems, they would probably lecture the man and send him home.

2. Police prerogative and action would mirror case 1, above.

3. Police could and would stop the woman, ask for her identification, and seek an explanation for her behavior. They would lecture the woman on her reckless, dangerous, and inconsiderate behavior. Depending on her attitude – whether she expressed regret and apology – they might let her go with a stern warning or escort her to the local *koban* and require that she write a letter of apology for breaking the law and endangering others. Despite the speed laws being broken, the police would probably not ticket the woman if she was genuinely apologetic and no harm had been done to people or property.

4. Police prerogative and action would mirror case 3, above. Depending on the man's attitude and the inconvenience he had caused others trying to use the street, police might insist on a formal, written apology. However, despite a law being broken, police would find the apology more important and constructive than a ticket.

5. Because the man is belligerent, the Japanese police would probably be more stern with him. They would initially ask him to apologize to the woman. If he refused to do so, they would escort him to the *koban* and lecture him, waiting for him to "sober up." When he was more sober, the police would ask him to write an apology to the woman. If he did so in good faith, he would be released. If he continued to refuse, the police would probably charge him with harrassment.

6. Because the boy was so remorseful, police would act very benevolently. Despite this being a relatively serious crime of theft, they would escort the boy home and lecture him and his parents, but also advise the parents to apply gentle discipline because the boy was so ashamed.

7. Police would question the boy and perhaps his parents. If his story were true, police would probably lecture the boy on reckless bike riding, littering or destroying other people's property, and causing dangerous situations. The boy would have to return and clean up his mess and apologize to all the neighbors he had inconvenienced.

8. Police would react much as in case 6. They would feel it their duty as police to take pity on the girl because of her situation and her apologetic attitude.

References:

Ames, Walter, *Police and Community in Japan* (Berkeley: University of California Press, 1981).

Bayley, David H., *Forces of Order* (Berkeley: University of California Press, 1976).

Diary of a Police Post (New York: TeleJapan, USA, 1987).

THE POLICE IN THE JAPANESE COMMUNITY*

Duties and Legal Status of the Japanese Police

Article 2 of The Police Law explains the general duties and legal position of the Japanese police. It states that the:

> Responsibilities and duties of the police are to protect the life, body and property of an individual, and to take charge of preventing, suppressing and investigating crimes, as well as apprehension of suspects, traffic control and other affairs concerning the maintenance of public safety and order.

...The Japanese police are involved in the host of law enforcement activities necessary for a society that is both urbanized and industrialized. The police are concerned with preventive patrol, traffic enforcement, criminal investigation, juvenile delinquency, and organized crime. They carry firearms, but their policy on the use of weapons is similar to that found in Sweden. With the exception of the traffic officers, the weapon is carried only while the officer is on duty. At all other times, weapons are stored at the police station. The frequency of incidents where firearms are utilized in the line of duty is indeed small compared to the extent to which they are used in the United States....

Police and the Public

Japan is the only country in the industrialized world that has registered either a decrease or no change in the number of nontraffic offenses reported to the police over the course of the past three decades. In recent years there has been a continued rate of decline in reported crimes committed by offenders over the age of 20. These include such serious offenses as homicide, rape, assault, and larceny. Unfortunately, when one considers certain categories of crime committed by people under 20 years of age, there have been some recent increases...

In addition to the low crime rate, the clearance rates [percent of crimes solved] recorded by the police are also of interest...the clearance rates in 1986 for some of the more serious crimes were: 96.7 percent for homicide, 88.1 percent for rape, 94.1 percent for assault, 78.5 percent for robbery, and 58.7 percent for larceny. These rates obviously serve as an important factor in the successful effort to generate public support for the police.

Western scholars who have studied the Japanese police have described an organization that utilizes a good deal of discretion and maintains a highly cooperative posture with the citizenry. In turn, the police elicit from the people a sense of trust and public support. Opposition to the police by way of open hostility is generally limited to extreme political groups.

[According to two Western scholars], this positive relationship between the police and the public is partially attributed to the traditional submissiveness that the Japanese show to authority figures. They suggest further that neither the police nor the public perceive the police as mere agents of the law; rather, they are viewed as moral authority figures. Despite this significant position, the police usually avoid asserting their authority in a formal manner. Instead, they prefer a more informal presence, if at all possible.

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American scholars have suggested that both the position of authority and the style of policing are reflected in an almost total lack of concern for several issues that have been perpetual points of tension in other countries. For example, it is believed that the job of the police officer is not as stressful in Japan as in other countries. The police are not forced to justify their position to a hostile citizenry because they already have the public's support. Although stress can be attributed to other factors, at least the Japanese police do not have to cope with that particular stressor.

Police corruption is rare in Japan and according to Bayley, author of *Forces of Order* (Berkeley: University of California Press, 1976), when it does occur, an individual is accused of criminality rather than a group. This is attributed both to the position that the police hold in society and to their team approach to policing. As was indicated in the previous section, the team approach to any enterprise in Japan is valued more than an individual's contribution. Allegiance to the group and its goals are taken more seriously. With that team mentality present in law enforcement, the opportunities for group corruption are reduced significantly.

Police brutality is almost nonexistent in Japan, and there is no movement to impose a civilian review mechanism on the police as is the case in a number of other countries. Civilian supervision of the police is already available both formally and informally, and it is considered adequate. The human rights bureau of the Ministry of Justice has the authority to review human rights violations, including police misconduct. Bayley discovered that few complaints against the police are filed with the bureau, against the police, and even those are declining in number. The prefectural legislators and the Public Safety Commissions can also act as a check on the police. Finally, defense attorneys and the news media actively scrutinize the tactics of the police. Each group supports the contention that brutality is not a problem.

...One should not be left with the impression, however, that the Japanese police have not been the subject of criticism. Recently, a small group of Japanese scholars and members of the Joint Committee of the Three Tokyo Bar Associations have become highly critical of some law enforcement practices...These critical issues center on the investigative tactics of the police – tactics which help to explain their high clearance rates. For example, under the Code of Criminal Procedure the police have fairly broad powers to arrest people without a warrant. Once arrested, the person is often detained for questioning for up to 23 days. People can be rearrested on other charges in order to continue the detention; these warrants are readily issued by the courts, who tend to defer to the judgment of police investigators. The accused also has no right to legal counsel during questioning...

The process is further facilitated by the policy of using police holding cells as substitute prisons. Unlike the regular detention facilities that are maintained by the Ministry of Justice, the substitute prisons are administered by the police. Over the years, the police have encouraged the government to provide more funding for the construction of such facilities, and successive governments have supported this request. There are presently over 1,000 substitute prisons throughout Japan.

The use of extended detention in these substitute prisons, coupled with the broad procedural powers accorded the police, has led detectives to focus almost exclusively on extracting confessions from the accused rather than on building cases on other kinds of evidence. Critics maintain that the circumstances of detention lead police to employ unjust treatment and sometimes illegal tactics during interrogation...

Despite the recent criticism of the police, a number of factors have been instrumental in enhancing the public's support for them. Indeed, some are related to the cultural traditions and social mores of the country. One should keep in mind, however, that the Japanese police have not always been held in high regard. From the turn of the century to the close of World War II, the police were guilty of misconduct and feared by segments of the population. Thus, the image that they now exude is fairly recent. A conscious effort must have been made to change the police image. In addition to the cultural tradition,

the current policies on recruitment and training, as well as the emphasis and methods directed at crime prevention, serve to explain the public's support for the police.

Crime Prevention. According to Walter L. Ames, who wrote *Police and Community in Japan* (Berkeley: University of California Press, 1981), the Japanese police have established two approaches to crime prevention. One is in the form of a public relations campaign that enhances the public's image of the police. For example, information about crime prevention techniques is published and distributed by the police. Special programs also have been developed to curb the illegal use of drugs and to reduce traffic accidents.

The other approach, creating a dialogue between the police and the public, is implemented through voluntary citizen support groups. The Japanese have had a long tradition of citizen participation in law enforcement. This is reflected today in the neighborhood associations in which every household is represented. Within the neighborhood associations, there are crime prevention and traffic safety associations. The former assist the police in advising residents on household security techniques, and the latter conduct campaigns to reduce traffic accidents....

Probably the most important feature of the Japanese crime prevention program is the existence of police boxes or *kobans*. *Kobans*, which are scattered throughout the urban areas, function along the lines of the mini-police stations that have become popular in some cities in the United States. *Kobans* serve two principal functions: they offer information to those in need of assistance, and they are also the first line of defense in the system's attempt to maintain law and order, because it is the officers assigned to the *kobans* who provide the basic street patrols. As Bayley has pointed out, these are the officers who physically demonstrate the existence of the police authority, resolve minor problems, and enhance the public's trust in the law enforcement community.

The *kobans* reflect a neighborhood-centered policing function. By patrolling a specific area over an extended period of time, they become particularly conscious of the needs and concerns of their immediate community. Their knowledge and understanding of the area is enhanced further by a survey conducted by the *koban* officers twice a year. While conducting the survey, it is common for officers to advise residents about various crime prevention techniques. The officers collect a host of information about the neighborhood through the survey. The names, ages, and employment of each resident are recorded; and the ownership of cars and their license numbers are routinely taken down. Additionally, the police inquire about any suspicious behavior or illegal activities in the area. Although people are not required to answer these questions, most willingly cooperate. Any information gathered remains at the *koban* to assist the officers in their work; it is not passed on to a government agency.

Bayley has pointed out that the survey serves another purpose. In the course of their duties, most police only come in contact with the criminal or deviant elements of society. In the process of the survey, however, the police are more frequently in contact with law-abiding citizens. In the long run, it is a healthy experience for the officer that also reinforces the public's positive image of the police.

POLICE RULES, AMERICAN-STYLE

1. It is your duty to enforce the law.

2. You can sometimes decide whether or not to enforce the law. You can make your decision based on police department rules, the seriousness and circumstances of the situation at hand, and past practices by yourself and other police officers.

3. You cannot use unnecessary force, and your firearm can only be used in self-defense or to protect another's life.

4. You must have "probable cause" to stop, detain, or question a person. Probable cause can include any suspicious or out-of-the-ordinary activity or behavior.

5. You must have a search warrant to search a person's home or personal property without his/her permission.

6. If you question a suspect in custody, you must inform the individual of his/her rights under the Miranda ruling.

POLICE RULES, JAPANESE-STYLE

1. Your job is to enforce the law, prevent crime, and maintain public safety and order.

2. You are to take a low profile in the community, encouraging the cooperation of the citizens in a joint effort at crime prevention. You and the neighborhood are to act as a team in crime prevention.

3. You are to present a moral example to the community.

4. You may go to considerable lengths to prevent crime, including questioning suspicious people, asking to search personal belongings, or asking them to come with you to the police station without an arrest. Citizens may refuse to do these things. However, if you have built the proper team relationship in your neighborhood, you should be able to get citizens to cooperate.

5. You have a great deal of discretion or flexibility in enforcing the law and furthering the judicial process. You should always look for a "minimalist" approach to solving problems and maintaining order. You may choose to let offenders off with a lecture, a warning, or an apology, or you may charge them formally with an offense. In making your decision whether to let an offender go or charge him, you will typically consider the seriousness and circumstances of the crime, but also the background and attitude of the offender, especially his sense of repentance.

6. An unwritten rule for the police is to show compassion and generosity for those enmeshed in the law. If minor offenders are genuinely repentant, the police believe justice has been served with the least disruption to society. Therefore, a heartfelt apology is highly valued as a resolution for minor crimes.

7. You should avoid force or the use of your weapon unless absolutely necessary. Off-duty police may not carry a weapon.

CASES

This handout contains descriptions of situations that a police officer might typically face in either Japan or the United States. For each of the situations below, decide the scope of the police officer's authority; that is, what he can do and the course of action he will take.

1. A tall man in tattered, soiled clothes, carrying a shopping bag, is spotted walking along a residential street in an upper middle-class neighborhood. When he sees the police, he ducks into an alley.

2. Late at night a man is spotted loitering in an alley behind an apartment house inhabited mostly by college students. The police officers on patrol suspect he may be a peeping tom.

3. A woman is clocked driving 50 mph in a 30 mph zone.

4. A well-dressed 40-year-old man parks his car illegally on a narrow residential street.

5. Police are summoned by a young woman who claims a man tried to force her to a hotel. Although the woman had previously dated the man, she had broken off the relationship. He had confronted her when she got off work and followed her, first inviting her and then threatening her if she didn't go to a hotel with him. The man, who is slightly drunk, is argumentative and denies all the woman's accusations.

6. Police stop a 14-year-old boy for riding a bike without a light at night. They discover that the bike had been stolen a few hours before. The boy is very ashamed and admits his guilt immediately.

7. Looking out her window, a woman sees a young boy pick up his bicycle from the sidewalk in front of a neighboring house and ride quickly away. Seeing a mass of broken bottles and rubbage strewn on the neighbors' sidewalk, the woman calls the police, who stop the boy several blocks away. When questioned, the boy says his bicycle hit a rock and crashed onto the sidewalk, spilling the groceries he was taking home to his mother.

8. Two police are walking through a department store and see a teenage girl pick up a scarf from a counter. She slips it into her book bag and leaves the store. The police follow her out, stop her, and question her about the scarf. The girl is very scared and repentant. She says she's never done anything like this before but she really needed a gift for her mother and had no money. She apologizes and begs the police to let her go.

5 A CASE OF PROCEDURAL JUSTICE: THE CULTURAL DEFENSE

Introduction:

Increasingly in our pluralistic society, the U.S. justice system is challenged to determine just solutions to social and legal problems in which immigrants or ethnic Americans have broken the law because they followed their own cultural traditions or the legal traditions of their native countries. Such cases raise fundamental questions of procedural justice: *What type of information can and should be gathered to make just decisions? To what extent should cultural background be considered in determining guilt or innocence?*

In this activity, a mock preliminary hearing in a murder trial with a cultural component, students analyze and present arguments for and against the use of a "cultural defense." They then apply a set of analytic tools to reach a decision on whether the use of a cultural defense in a criminal trial furthers or undermines the goals of procedural justice.

This activity may be used to provide a cultural focus to the Center for Civic Education secondary teaching unit on "Justice."

Objectives: At the end of this lesson, students will be able to:

1. Define the goals of procedural justice and analyze a culturally-focused issue of procedural justice.

2. Recognize social and cultural traditions and norms as factors that influence an individual's or group's perceptions of acceptable and/or legal behavior.

3. Appreciate the cultural context from which laws in one country may be unknowingly broken by representatives from different cultural or national groups.

4. Consider the arguments for and against a "cultural defense" for illegal acts.

5. Debate the degree to which our judicial system can and should accommodate cultural differences and still effectively preserve the values and norms of society as a whole.

Time: 2 class periods

Materials Required: Copies of Handouts J-13 and J-14 for all students; enough copies of each version of Handout J-15 (a, b, and c) for one-third of the students.

Procedure:

1. Introduce the activity by asking students to articulate the purposes of law – to establish and preserve order within a society, to institutionalize accepted norms of behavior, etc. How do a society's cultural and religious values influence the laws it establishes? Ask students to consider laws that have derived from the Judeo-Christian religious tradition (e.g., the Ten Commandments), as well as laws that

institutionalize social or cultural norms (e.g., laws protecting private property, laws related to dress, behavior, sanitation).

2. Explain that just as laws are derived to protect and enforce social customs and values, they vary across countries and cultures. For example, laws against drinking may be very strict in religious societies, but lax or nonexistent in other societies. Laws protecting property may be very strong in a country like the United States, which values individual rights and private property, but very weak in societies that emphasize the social whole over the individual, or public or common ownership over private ownership.

3. Ask students to consider the situation of a newcomer to the United States, who may break laws with which he or she is unfamiliar because similar laws do not operate in his/her native country. In our increasingly pluralistic society, do we have a responsibility to respect cultural differences at the expense of law? Is it our responsibility to strictly and uniformly enforce the law? How should we balance two conflicting interests represented by our society's laws and our society's cultural diversity?

4. Distribute Handout J-13. The first page defines procedural justice and its goals. Explain that *procedural justice* refers to the fairness with which information is gathered to determine innocence or guilt. In a family argument, procedural justice might mean that parents make sure to hear all sides of the story before deciding that one child is at fault. In a criminal trial, procedural justice means all information that might influence a decision is fairly gathered and heard before a decision is made. It means that the court assures that both sides of a case are heard and that the interests and rights of both sides are protected through the testimony presented.

5. Turn to the second page of Handout J-13, which presents a chart of "Tools for Determining Procedural Justice." Explain that the questions on this sheet provide useful guidelines for deciding whether a procedure will promote a fair or just decision. Review the questions with the students. You may choose to have students apply the questions quickly to a hypothetical situation to see how they can be used. Explain that students will be applying these "tools" as they consider how to fairly collect information and make a decision on a criminal trial with an important cultural component.

6. Distribute Handout J-14 and read the case of Mrs. Kimura aloud with the class. How was Mrs. Kimura's culture a factor in her crime? Why would it be important to Mrs. Kimura's defense to emphasize her cultural traditions? Explain that in this activity, students will consider the notion of the cultural defense as an issue of procedural justice. Students will take one of three positions in deciding whether a cultural defense should be allowed in this criminal trial; that is, whether such a defense meets the three goals of procedural justice:

- Increases the chances that all information necessary for making wise and just decisions is gathered.
- Ensures the wise and just use of information in making decisions.
- Protects individual rights and societal welfare.

7. Divide the class into three groups:

- Group one will argue for the use of the cultural defense. Within this group, have students work in three pairs to prepare arguments for each of the three roles outlined in Handout #J-15a.
- Group two will argue against allowing a cultural defense. Within this group, have students work in three pairs to prepare arguments for each of the three roles outlined on Handout #J-15b.
- The third group of students will take the roles of judges hearing arguments for both sides; this group makes the final decision on whether to allow the cultural defense. Students in this

group should review all the arguments presented on Handout J-15c in order to prepare for their role.

8. Allow one class period for students to review and analyze arguments and prepare their speeches for the hearing.

9. Conduct the mock hearing. One student representing each role should present a two- to three-minute speech to the judges, presenting the strongest arguments in support of their positions. Judges should be alerted to take notes of the best arguments they hear. At the conclusion of testimony, judges will meet to complete the "Tools for Determining Procedural Justice" chart, based on the arguments they have heard. They will then present their decision and the reasons for it to the class.

10. Students may want to know the real outcome of this case, which is based upon an actual case in California in 1984. In that case, a similar hearing was conducted to determine whether to allow a cultural defense for Mrs. Kimura. The defense attorney in the case was not in favor of a cultural defense because he felt it was too risky for his client. By mutual decision of the judge and attorneys representing both sides, the court chose not to hear a cultural defense in the case. Ultimately, that decision became a moot point because the case was plea-bargained from first degree murder to manslaughter. Mrs. Kimura received a five-year suspended sentence with mandatory psychiatric counseling.

WHAT IS PROCEDURAL JUSTICE?

Procedural justice has been called "the keystone of liberty" and "the heart of the law."

Procedural justice refers to:

- the fairness of the ways information is gathered

  and

- the fairness of the ways decisions are made.

It does *not* refer to the fairness of the decisions themselves.

Respect for procedural justice is often a key indicator of a democratic political system. It has been said that the degree of procedural justice in a society is a good measure of the degree of freedom in that society, and of that society's respect for human dignity and other basic human rights.

The goals of procedural justice are to:

- Increase the chances that all information necessary for making wise and just decisions is gathered.
- Ensure the wise and just use of the information in making decisions.
- Protect the right to privacy, human dignity, and freedom.

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TOOLS FOR DETERMINING PROCEDURAL JUSTICE

At Issue: *Should testimony that supports a "cultural defense" for a serious crime be allowed?*

Tool #1: Identify the information sought or decision to be made:

A. What information is being sought?	
B. What decision is being made?	

Tool #2: Evaluate the procedures used to gather information or make a decision:

A. Does the procedure increase or decrease the chance that all information necessary for making a wise and just decision is obtained?	
B. Does the procedure ensure that the information gathered is reliable?	
C. Is the procedure predictable and flexible enough to promote justice?	

Tool #3: Consider competing values and interests. Does the procedure protect or endanger important values and interests of our society?

A. What values, goals, or standards of our society and/or legal systems would be *promoted* by this procedure?	
B. What values, goals, or standards of our society and/or legal system would be *endangered* by this procedure?	

THE CASE

On January 20, Mrs. Fumiko Kimura, a Los Angeles resident, received a call from a Japanese-American woman claiming to have been Mr. Kimura's mistress for the past three years. The mistress wanted to end the affair honestly by telling Mrs. Kimura all about it.

Nine days later, on January 29, Mrs. Kimura walked into the ocean carrying her six-month-old daughter and four-year-old son. She attempted to drown herself and her two children. Two teenagers spotted three bodies floating in the water and went to their rescue. Mrs. Kimura was saved, but her two children died.

When questioned by police, Mrs. Kimura explained that the realization of her husband's infidelity had brought shame and humiliation on her and her entire family because it meant she had failed as a wife. In Japanese culture, suicide is considered an honorable way to rid the family of the shame caused by such a failure. Thus, Mrs. Kimura had chosen to commit a Japanese ritual known as parent-child suicide, or *oyako-shinjo*. According to Japanese culture, children are considered an extension of the mother, not separate individuals. Thus, to commit suicide the mother must kill not only herself but her extensions, the children. To leave the children behind would make them the target of contempt by society.

Mrs. Kimura has been charged with two counts of first-degree murder under California law. She faces a possible death sentence if convicted.

THE ISSUE OF PROCEDURAL JUSTICE

The issue of Mrs. Kimura's cultural background and customs has raised controversial questions concerning how to fairly try her case. The defense attorney representing Mrs. Kimura has petitioned the judge in the case to allow him to present a *cultural defense* for Mrs. Kimura. In building a cultural defense, the defense attorney would argue that culture should be the key factor in determining Mrs. Kimura's guilt or innocence. A cultural defense would be based on the principle that if an act is not a crime in the accused's native culture, then the accused has no awareness of having broken a law or committed a crime. The accused's culture becomes an excuse for the crime.

The judge must decide whether a cultural defense, which has never been used before in a criminal case, will serve or undermine the goals of procedural justice. He has called a hearing to consider the issue. The *defense*, whose job is to protect the rights of the accused, will be allowed to present an argument in favor of allowing a cultural defense. He is allowed to call in two experts to support his position. The *prosecution*, whose job is to protect the general welfare of society, will present an argument opposing the use of a cultural defense. She, also, will be allowed to call two experts to support her position. Based on the arguments presented, the judge will make a ruling on whether to allow a cultural defense in this case.

Role #1: John Klein, Defense Attorney

As defense attorney, your primary interest is in getting your client acquitted. You feel the cultural defense may be the best way to achieve this end.

Review the arguments provided in this handout in support of the cultural defense. From all the arguments presented, select the ones you feel will best support your request that the judge allow a cultural defense in this case. Remember that, as a lawyer, you should base your position on the issue of procedural justice for your client. You will also want to cite arguments based on legal philosophy and legal precedent established through comparable cases. Prepare a two- to three-minute position statement to present to the judge at the preliminary hearing.

Role #2: Susan Fine, Social Worker

As a social worker specializing in helping new immigrants adapt to the United States, you are often brought in as an "expert witness" in cases involving immigrants' conflicts with our laws. In these cases, you are called upon to explain the cultural background of the person on trial and make a case for leniency in sentencing. From your experience, you believe strongly that consideration of cultural background is essential if some immigrants are to get a fair trial.

Review the arguments in support of a cultural defense provided in this handout. Select arguments you believe will best reflect your position as a social worker in favor of the cultural defense. Prepare a two- to three-minute position statement to present to the judge at the preliminary hearing for the Kimura case.

Role #3: Linda Kamakura, Japanese-American Petitioner

As a representative of over 1,000 Japanese-Americans in Los Angeles who signed a petition in support of Mrs. Kimura, you have been asked to speak on behalf of a cultural defense at the preliminary hearing of the Kimura case.

You strongly believe that Mrs. Kimura is a product of her culture and that she followed the customs of her culture in her parent-child suicide attempt, just as she had followed the customs of her culture in all other aspects of her life. Because Mrs. Kimura is Japanese, the only humane and fair legal procedure would be to try and sentence her according to Japanese law, even though the act occurred in the United States.

Review the arguments for the cultural defense presented in this handout. From all the arguments provided, select the ones you think best reflect your position in support of the cultural defense. Prepare a two- to three-minute position statement to present to the judge at the preliminary hearing on this case.

ARGUMENTS SUPPORTING THE USE OF A CULTURAL DEFENSE IN CRIMINAL CASES

- If the court refuses to allow a cultural defense, it might be perceived as evidence of disdain for an ethnic minority's cultural values. When an ethnic group's cultural values are ignored by the mainstream society, that group may become alienated from the majority culture. That alienation could, in turn, give rise to hostility and ethnic conflicts that would significantly disrupt the social order.

- If the court repudiates the cultural defense, it takes the chance of sending out a broad message that an ethnic group must trade in its cultural values for that of the mainstream society if it is to be accepted as equal by the majority. A social or judicial system that punishes a person for following his or her culture is making a pretty clear statement that society considers the culture to be inferior.

- By judging each person according to the standards of his or her native culture, the court could preserve the values of that culture and thus help to maintain a culturally diverse society, which is a hallmark of the United States.

- By absorbing cultural elements from a broad spectrum of ethnic groups, American culture has remained dynamic and creative, continually growing as it weaves threads of various immigrant groups into its social fabric.

- American society and the legal system it has developed are committed to equality. Equality means not only equality of individuals but equality of ethnic groups. If we are to insure equality of ethnic groups, then we must respect each group's right to be different. The majority cannot be allowed to penalize a minority group simply because it is different. The cultural defense insures that minority ethnic groups are treated fairly and equally before the law, that they are not penalized just for being different.

- The cultural defense should be as basic to the U.S. justice system as commitment to cultural pluralism is to our society. The cultural defense helps maintain diversity of cultural identities in this country by protecting important ethnic values.

- Mrs. Kimura was a traditional Japanese woman and must be understood as such. She embraced all Japanese traditions. She even kept her house Japanese style, although she lived in California 14 years. The Kimuras slept on futons and left their shoes by the front door. Mrs. Kimura bathed Mr. Kimura's feet each night before he went to bed. Mrs. Kimura's response to her husband's unfaithfulness made as much sense in her culture as the way she kept her house. Her acts must be judged in that context.

- In Japan, the practice of mother-child suicide is illegal, but it is not uncommon. It happens perhaps once a day and does not receive much attention. In Japan, such a case might be dismissed before going to trial. If it did go to trial, the charge would be manslaughter rather than murder. The defendant would be treated with benevolence and compassion because that is the philosophy of the Japanese judicial system. The court would strongly consider Mrs. Kimura's pain and humiliation. It would probably give her a suspended sentence.

- The "ignorance of the law is no excuse" view is unfair because it requires foreigners to conform to the majority's standards and values. The result is that the values of the foreign culture, which enrich American life, are lost.

- The cultural defense recognizes the importance of the individual. Respect for individuals and their personal customs is an integral part of the human rights philosophy on which the United States

was founded. For immigrants to be forced to deny their original culture means they must deny their identity and lose their self-esteem.

- A main issue in determining procedural justice is fairness to the defendant. If we are to insure this fairness to defendants of other cultures, we must allow a cultural defense.

- The validity of the cultural defense within our judicial system is founded in our country's commitment to the principles of individual justice. The American criminal justice system is committed to securing justice for individuals. In the context of criminal law, the ultimate aim of this principle of individual justice is to tailor punishment to fit the degree of a person's culpability.

- The cultural defense has an analogy in the battered spouse defense. If our courts accept a history of spousal abuse as a mitigating factor in a murder, then why not accept cultural history?

- Treating people raised in a foreign culture differently should not be viewed as an exercise in favoritism, but rather as an expression of our nation's commitment to and exercise of principles of fairness.

- It is essential to understand the particulars of this case. In Japan, a mother who kills herself and leaves the children behind would be criticized far more harshly than a mother who also takes the lives of her children. Growing up motherless, the products of a failed marriage, would make the children outcasts for life. To understand parent-child suicide, one must understand the Japanese sense of family as an extension of self and the seriousness of the shame a failed marriage brings to a traditional Japanese.

Role #4: Melinda Gonzales, Prosecuting Attorney

As prosecuting attorney, your job is to protect society and uphold its standards. You are very conscious of the public sentiment and tragic circumstances of this case. However, as a prosecutor in Los Angeles, you are also extremely sensitive to the fact that there are literally hundreds of ethnic and cultural groups in your jurisdiction, all with unique customs and traditions. The courts have to set a standard of equality, fairness, and objectivity for all. From a purely legal standpoint, you are concerned with how establishing a precedent for using a cultural defense might tie your hands in prosecuting any case involving an accused from a minority culture. How would standards of law and order be affected?

Review the arguments opposing the cultural defense presented in this handout. From all the arguments cited, select those that you think best reflect your position as a prosecuting attorney opposing the cultural defense. Keep in mind that your position should revolve around the issue of procedural justice as it protects the values and interests of society at large. Prepare a two- to three-minute position statement to present to the judge at the preliminary hearing on this matter.

Role #5: Paul Chun, Asian-American Lawyers Association

Being from an Asian-American minority group, you are sensitive to the cultural dimensions of the Kimura case. Yet, you still think it would be a mistake if the judge were to allow a cultural defense in this case. Your opinion is that the cultural defense conflicts with the fundamental principle of equal justice. Because it essentially boils down to special treatment for some immigrant groups, the cultural defense would perpetuate and emphasize the differentness of these groups. The special treatment would cause ill-feeling and social prejudice against these groups.

Review the arguments opposing the cultural defense provided in this handout. From all the arguments presented, select several that you think best support your position opposing the cultural defense. Prepare a two- to three-minute position statement to present to the judge at the preliminary hearing on the Kimura case.

Role #6: Lee Winston, Legal Historian, University of California at Berkeley

As an historian of the U.S. legal system, you are opposed to the use of a cultural defense in criminal trials because you think it flies in the face of our legal philosophy and practice over the past century.

Review the arguments opposing the cultural defense presented in this handout. From all the arguments cited, select several that you think best reflect your concerns as a legal historian. Prepare a two- to three-minute position statement to present to the judge at the preliminary hearing for the Kimura case.

ARGUMENTS AGAINST ALLOWING A CULTURAL DEFENSE IN CRIMINAL CASES

- Preservation of the social order is perhaps the highest aim of the legal system. To preserve order, societies must lay down and adhere to a set of laws that requires obedience of all members of the society, regardless of individual factors. Accepting a cultural defense in criminal trials would completely undermine the universality of the law and, thus, ultimately damage the social order.

- Every society operates on minimal standards of conduct to which every member of society must conform. If we begin to make exceptions for one group, there will be no end to exceptions and the very foundation of our system will fall apart.

- A fundamental principle of law in this country is that "ignorance is no excuse for non-compliance." This principle sets the standard for an objective, rational legal system.

- It is of great importance that the administration of the law be uniform. Law must be administered without respect to person. It would be dangerous, as well as unjust, to introduce into general practice an exception to the law in favor of foreigners.

- Murder is a most serious crime in this country. Its seriousness cannot and should not be lightened by considering legal or cultural standards from other countries.

- You are treading on shaky ground when you decide something based on a cultural tradition because our society is made up of so many different cultures. You have to draw the line somewhere. People have chosen to live here and they must abide by the laws or we will have anarchy.

- Accepting cultural factors as a legitimate excuse for a criminal activity would create a specially privileged segment of the population. This privileged group would be able to rely on an excuse that the majority of the population could not use. It would give them an unfair advantage. It would set up an inequality of groups before the law, which is contrary to our whole legal system.

- The cultural defense would create an unfair exception to criminal law for newcomers by allowing their ignorance of U.S. law to be an excuse for acts that long-term residents of the United States would be subject to criminal liability for, despite their possible ignorance.

- If we establish a precedent of a cultural defense in criminal trials, we raise the question of who can use it and who cannot. Are all immigrant groups allowed to use it, even if they come from cultures quite similar to ours? Can they use it no matter how long they have been in this country, or only if they have been here less than a certain amount of time – six months, a year, five years? Where is the cut-off?

- Mrs. Kimura had lived in California 14 years when she tried to commit suicide. Certainly that is enough time to be familiar with and responsible to our laws. Even if the cultural defense were valid, this case should not qualify because Mrs. Kimura really could not be considered to be a recent immigrant.

- If the precedent of the cultural defense is established, the American justice system will have trouble maintaining the deterrent effect of criminal law on immigrant groups. The use of the cultural defense would remove all incentive for foreigners to learn our laws. By rejecting the cultural defense and not allowing it in our courts, we will be encouraging immigrants to adapt more quickly to their new homeland. We will, in effect, aid them in their general assimilation into United States society.

- Our laws concerning murder uphold and protect a fundamental value in our society – the sanctity of human life. This cannot be undermined for any reason.

- Cultural background should not exonerate the accused from guilt but, rather, establish a case for leniency in sentencing. This is a far preferable procedure because it avoids the precedent of the cultural defense.

- The "cultural defense" is tantamount to saying to everyone of Japanese heritage that it is okay to go out and kill your children, when it is not!

- In criminal cases, we must consider two things: whether there was intent to commit a crime, and the degree to which the crime was harmful to society as a whole. The problem with allowing a cultural defense is that it focuses all attention on the first consideration – the accused's state of mind – and presents the case that a crime was not committed because the accused did not know it was a crime. Unfortunately, such a defense sacrifices the second consideration – the welfare and protection of society as a whole. In a case as serious as the murder of one's children, our justice system cannot underemphasize the harmfulness of this crime to society as a whole.

- In 1857, Secretary of State Daniel Webster established a protocol against the cultural defense by saying, "Every foreigner residing in a country is as much bound to obey its laws as native citizens." This standard is as valid and just today as it was then.

- The cultural defense is a dangerous idea. It exposes the U.S. justice system to patriarchal values from abroad – values that are often detrimental to women and children, who were often treated as second-class citizens in the countries they left behind. The cultural defense, rather than providing for justice, may really be inhumane, allowing women and children of minority cultures to continue to be victimized in their new homes. The cultural defense may contribute to the perpetuation of unjust behavior and stereotypes.

Role #7: The Judge

You are the judge presiding over the Kimura murder case. The defense attorney representing Mrs. Kimura has requested that he be allowed to base his case for Mrs. Kimura's innocence on an unprecedented strategy – *a cultural defense*. This request has raised an important question of procedural justice. On the one hand, *can the accused receive a fair trial if she is not allowed to emphasize the role her culture played in motivating her actions*? On the other hand, *will the interests of society be served and protected if such testimony provides the excuse for a serious crime?*

You have called a preliminary hearing to rule on this issue. You have invited the defense attorney, prosecuting attorney, and two experts representing each side to present arguments on this issue. You will then decide whether to let the defense attorney use the *cultural defense*.

To prepare for your role, you should review and be familiar with the range of arguments for and against the cultural defense. They are provided for you on this handout. You should also think of questions you might want to ask the lawyers and experts to clarify the issue.

ARGUMENTS SUPPORTING THE USE OF A CULTURAL DEFENSE IN CRIMINAL CASES

- If the court refuses to allow a cultural defense, it might be perceived as evidence of disdain for an ethnic minority's cultural values. When an ethnic group's cultural values are ignored by the mainstream society, that group may become alienated from the majority culture. That alienation could, in turn, give rise to hostility and ethnic conflicts that would significantly disrupt the social order.

- If the court repudiates the cultural defense, it takes the chance of sending out a broad message that an ethnic group must trade in its cultural values for that of the mainstream society if it is to be accepted as equal by the majority. A social or judicial system that punishes a person for following his or her culture is making a pretty clear statement that society considers the culture to be inferior.

- By judging each person according to the standards of his or her native culture, the court could preserve the values of that culture and thus help to maintain a culturally diverse society, which is a hallmark of the United States.

- By absorbing cultural elements from a broad spectrum of ethnic groups, American culture has remained dynamic and creative, continually growing as it weaves threads of various immigrant groups into its social fabric.

- American society and the legal system it has developed are committed to equality. Equality means not only equality of individuals but equality of ethnic groups. If we are to insure equality of ethnic groups, then we must respect each group's right to be different. The majority cannot be allowed to penalize a minority group simply because it is different. The cultural defense insures that minority ethnic groups are treated fairly and equally before the law, that they are not penalized just for being different.

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- The "ignorance of the law is no excuse" view is unfair because it requires foreigners to conform to the majority's standards and values. The result is that the values of the foreign culture, which enrich American life, are lost.

- The cultural defense recognizes the importance of the individual. Respect for individuals and their personal customs is an integral part of the human rights philosophy on which the United States

was founded. For immigrants to be forced to deny their original culture means they must deny their identity and lose their self-esteem.

- A main issue in determining procedural justice is fairness to the defendant. If we are to insure this fairness to defendants of other cultures, we must allow a cultural defense.

- The validity of the cultural defense within our judicial system is founded in our country's commitment to the principles of individual justice. The American criminal justice system is committed to securing justice for individuals. In the context of criminal law, the ultimate aim of this principle of individual justice is to tailor punishment to fit the degree of a person's culpability.

- The cultural defense has an analogy in the battered spouse defense. If our courts accept a history of spousal abuse as a mitigating factor in a murder, then why not accept cultural history?

- Treating people raised in a foreign culture differently should not be viewed as an exercise in favoritism, but rather as an expression of our nation's commitment to and exercise of principles of fairness.

- It is essential to understand the particulars of this case. In Japan, a mother who kills herself and leaves the children behind would be criticized far more harshly than a mother who also takes the lives of her children. Growing up motherless, the products of a failed marriage, would make the children outcasts for life. To understand parent-child suicide, one must understand the Japanese sense of family as an extension of self and the seriousness of the shame a failed marriage brings to a traditional Japanese.

ARGUMENTS AGAINST ALLOWING A CULTURAL DEFENSE IN CRIMINAL CASES

- Preservation of the social order is perhaps the highest aim of the legal system. To preserve order, societies must lay down and adhere to a set of laws that requires obedience of all members of the society, regardless of individual factors. Accepting a cultural defense in criminal trials would completely undermine the universality of the law and, thus, ultimately damage the social order.

- Every society operates on minimal standards of conduct to which every member of society must conform. If we begin to make exceptions for one group, there will be no end to exceptions and the very foundation of our system will fall apart.

- A fundamental principle of law in this country is that "ignorance is no excuse for non-compliance." This principle sets the standard for an objective, rational legal system.

- It is of great importance that the administration of the law be uniform. Law must be administered without respect to person. It would be dangerous, as well as unjust, to introduce into general practice an exception to the law in favor of foreigners.

- Murder is a most serious crime in this country. Its seriousness cannot and should not be lightened by considering legal or cultural standards from other countries.

- You are treading on shaky ground when you decide something based on a cultural tradition because our society is made up of so many different cultures. You have to draw the line somewhere. People have chosen to live here and they must abide by the laws or we will have anarchy.

- Accepting cultural factors as a legitimate excuse for a criminal activity would create a specially privileged segment of the population. This privileged group would be able to rely on an excuse that the majority of the population could not use. It would give them an unfair advantage. It would set up an inequality of groups before the law, which is contrary to our whole legal system.

- The cultural defense would create an unfair exception to criminal law for newcomers by allowing their ignorance of U.S. law to be an excuse for acts that long-term residents of the United States would be subject to criminal liability for, despite their possible ignorance.

- If we establish a precedent of a cultural defense in criminal trials, we raise the question of who can use it and who cannot. Are all immigrant groups allowed to use it, even if they come from cultures quite similar to ours? Can they use it no matter how long they have been in this country, or only if they have been here less than a certain amount of time – six months, a year, five years? Where is the cut-off?

- Mrs. Kimura had lived in California 14 years when she tried to commit suicide. Certainly that is enough time to be familiar with and responsible to our laws. Even if the cultural defense were valid, this case should not qualify because Mrs. Kimura really could not be considered to be a recent immigrant.

- If the precedent of the cultural defense is established, the American justice system will have trouble maintaining the deterrent effect of criminal law on immigrant groups. The use of the cultural defense would remove all incentive for foreigners to learn our laws. By rejecting the cultural defense and not allowing it in our courts, we will be encouraging immigrants to adapt more quickly to their new homeland. We will, in effect, aid them in their general assimilation into United States society.

- Our laws concerning murder uphold and protect a fundamental value in our society – the sanctity of human life. This cannot be undermined for any reason.

- Cultural background should not exonerate the accused from guilt but, rather, establish a case for leniency in sentencing. This is a far preferable procedure because it avoids the precedent of the cultural defense.

- The "cultural defense" is tantamount to saying to everyone of Japanese heritage that it is okay to go out and kill your children, when it is not!

- In criminal cases, we must consider two things: whether there was intent to commit a crime, and the degree to which the crime was harmful to society as a whole. The problem with allowing a cultural defense is that it focuses all attention on the first consideration – the accused's state of mind – and presents the case that a crime was not committed because the accused did not know it was a crime. Unfortunately, such a defense sacrifices the second consideration – the welfare and protection of society as a whole. In a case as serious as the murder of one's children, our justice system cannot underemphasize the harmfulness of this crime to society as a whole.

- In 1857, Secretary of State Daniel Webster established a protocol against the cultural defense by saying, "Every foreigner residing in a country is as much bound to obey its laws as native citizens." This standard is as valid and just today as it was then.

- The cultural defense is a dangerous idea. It exposes the U.S. justice system to patriarchal values from abroad – values that are often detrimental to women and children, who were often treated as second-class citizens in the countries they left behind. The cultural defense, rather than providing for justice, may really be inhumane, allowing women and children of minority cultures to continue to be victimized in their new homes. The cultural defense may contribute to the perpetuation of unjust behavior and stereotypes.

Law and Cultures

THE HMONG

This unit opens with an essay on the cultural context for the behavior and legal traditions of Hmong peoples. The author, Vang Pobzeb, a Ph.D. candidate at the Graduate School of International Studies, University of Denver, and chair of the Hmong Council Education Committee, argues that to understand Hmongs, we must broadly examine three main themes: clan systems, religion, and culture.

The essay is followed by four lessons that focus on the conflicts and problems faced when Hmong refugees resettle in the United States. The first lesson uses a video to examine the Hmong culture as it existed before the Vietnam War, the changes that resulted because of the war, and the transition to "Becoming American." Lesson 2 emphasizes the role of geography in shaping the history and culture of the Hmong people. The third lesson examines customary but unwritten laws of Hmong society and how those laws might apply to situations in the United States. The final lesson is a role play in which students try to resolve a dilemma that arises when traditional Hmong marriage practices conflict with U.S. laws.

HMONG CULTURE RELATED TO LAW AND EDUCATION

by

Vang Pobzeb

Political Organization of the Hmongs

The Hmong clan systems have been one of the pillars of Hmong culture for centuries. The Hmong Council, Inc. (organized in Fresno, California, in December 1982) presently recognizes 18 Hmong clans: Fang, Hang, Her, Khang, Kong, Kue, Lo, Ly, Moua, Pha, Thao, Cha, Cheng, Chue, Vang, Vue, Xiong, and Yang. Leaders of the 18 clans comprise the board of directors of the Council. Each member is elected by the people for a two-year term.

The clan system regulates marriage. Males and females within one clan are prohibited from marrying. Four clans may not intermarry: the Vang clan is prohibited to marry with the Fang clan, the Kue clan with the Khang clan. In addition to marriage, the clans regulate family relations, conciliation and cooperation, legal code of conduct, kinship, leadership roles, and cultural integration.

Religious Beliefs among the Hmongs

The Hmong people, scattered in all parts of the world, believe in animism, shamanism, Confucianism, Buddhism, and Christianity. Hmongs carried animism, Confucianism, and Buddhism from China and Laos and received Christianity from the religious missionaries of France, other European countries, and the United States.

Animism and the Hmongs

For Hmong animist believers, there is life after death. They believe that there are ghosts, gods, and spirits in the world. The purpose of worship is to state good intentions to those who have passed away. "Rituals connected with a cult of ancestors are carried out by the heads of extended family households. Other rituals mark the time of planting and the lunar new year."[1]

Many Hmongs, who avoid dogmatic beliefs, maintain that religion is for life after death, so religion should not be a major factor in life before death in dividing Hmong society.

Shamanism and the Hmongs

Shamanism has been a part of animism and spiritualism in Hmong society for thousands of years. In the Hmong language, shamanism is called *ua neeb*. A shaman, either male or female, has certain powers from heaven to cure sickness and to eliminate ghosts/spirits, *dlab*, from the household and individuals. Soul, *pli*, is a human being, spiritually alive. Hmongs tend to believe that disease and *dlab* cause sickness and death to human beings. Therefore, they maintain that human beings should be cured by both shamans and medical doctors.

Confucianism

While the number of actual Hmong Confucians may not be large, the beliefs of Confucianism have influenced the Hmong through their long association with the Chinese. Indeed, this system of thought has been influential throughout Asia.

In the world of Confucius, the Chinese philosopher (551-479 B.C.), the following four theories of human relations are important to understand humans and nature:

1. Three parties are central to the relations between humans and nature: heaven, human, and earth. The human is regarded as the center of nature. It is concluded that heaven and earth are created for the benefit of humans.

2. In humans' relations with one another, Confucians classify the human community into three groups: the crowd, the family, and the individual.

3. In respect to human nature, the traditional Confucianist classifies human behavior into three temperaments: the aggressive, the restrained, and the passive.

4. In humans' relations with time, the Confucians recognize three stages: the past, the present, and the future.[2]

Confucianism is a practical humanism that applies to daily life. The Five Fundamental Conceptions of this humanism are as follows:

1. The human being is the centre of the universe, and therefore human dignity must be upheld.

2. Humans are by nature good, not conceived of sin, and therefore require no redeemer from heaven.

3. Humans have common sense and should be able to judge for themselves.

4. Any decision made by humans ought to be to their own advantage.

5. Culture, of which religion and philosophy are but a part, is a tool of life and humans are in a position to use it for their own benefit.[3]

Confucians believe that religion is the guiding principle of society, responsible for ensuring right conduct and action. They teach the following six moral principles:

1. Human nature is good, and evil is essentially unnatural.

2. Humans are free to conduct themselves as they will and be the master of their choices.

3. Virtue is its own reward. If one does good for a reward, or avoids evil for fear of punishment, that is not virtue.

4. The rule for individual behavior is: what you do not want others to do to you, do not do to them.

5. A man has five duties: to his ruler, to his father, to his wife (and she to him), to his elder brother, to his friend; the most important of these is the filial duty.

6. Humans should strive to become superior.[4]

Confucianists categorize all human relations into "five fundamental relationships between people."[5] In the first relationship, between ruler and subject, the people are expected to respect the law and order of the government and court. On the other hand, the government is expected to provide for the interests of the people. According to Confucianists, "good government" requires good leaders who can organize good laws and orders for the people. In the Confucian political system, the ruler should esteem the five excellences and avoid the four evils. The five excellences are: (1) plentitude without extravagance; (2) taxation without exciting discontent; (3) desire without covetousness; (4) dignity without haughtiness; and (5) majesty without fierceness. The four evils to be avoided are: (1) without instruction in the law, to inflict punishment – that is tyranny; (2) without proper warning, to expect perfect adherence – that is oppression; (3) to be late in giving orders but to expect early obedience – that is robbery; and (4) to tax and to spend in a stingy manner – that is a misuse of government functions.[6]

In the second relationship, between husband and wife, the wife is subject to her husband and is expected to respect him. The husband should also respect the wife as a woman. The husband is expected to support the wife and children. The wife is not to commit adultery, but under certain circumstances the husband can, if it does not destroy the relationship. In Hmong society, marriage is for a lifetime, so both the husband and the wife must closely cooperate to build the family's foundations. Sexual desires and self-interests are not priorities. Individual good is secondary to the collective good.

In the third relationship, between father and son and between parents and children, children are expected to respect parents. Students are expected to respect teachers, counselors, and school administrators. Similarly, in the fourth relationship, between elder brother and junior brother, the younger brother is expected to obey the rules and orders of the elder brother. The younger brother must respect the elder brother. The last category, the relationship between elder friend and junior friend, is based on the principles of mutual respect and cooperation. Age is so important that young people are to obey older people. Cooperation and order between the young and older generations are seen as necessary for a good society.

Confucius taught that good government governs according to the following "Five Constant Virtues":

1. Benevolence, which is always to think first of what is good for the people.
2. Righteousness, which is not to do to your subjects what you would not want them to do to you if you were in their place.
3. Propriety, which is always to behave with courtesy and respect toward your subjects.
4. Wisdom, which is to be guided by knowledge and understanding.
5. Sincerity, which is to be sincere and truthful in all you do.[7]

Accordingly, the Hmong clan leaders are expected to conduct themselves correctly. The people in turn are expected to respect the right decision of the clan leaders. Opposition and public criticism in Hmong society are rare.

Confucians did not teach that as little government as possible is good government, rather that good government and good leaders are necessary for a peaceful society and world. Good community development depends on good cooperation and objectives of the government and people. Good students depend on good teachers. Confucians emphasized that the "great foundations of civilized society" have four principles:

1. If there be righteousness in the heart, there will be beauty in the character.
2. If there be beauty in the character, there will be harmony in the home.

3. If there be harmony in the home, there will be order in the nation.

4. If there be order in the nation, there will be peace in the world.[8]

Hence, peace and order in the family structure are essential and basic to world peace. To summarize, Confucians believe in the interrelationships among law, peace, and order.

Not surprisingly, Confucians believe that men and women did not bring knowledge from heaven, so they need education and practice on earth, and that humans need education and job training before gaining experiences to become good men, good women, good employees, and good governors. Hmongs assume that education lays the foundation for people to become good and productive citizens in society. Hmongs are also pragmatists, interested in practice to gain experience. They are interested in loyalty between the ruler and the subject and between employers and employees.

Siddhartha Guatama Buddha and Buddhism

Some Hmongs believe in Buddhism, the religious system of the Indian Siddhartha Guatama Buddha (c. 563-483 B.C.). In Laos, 80 percent of the Hmongs and Laotians believe in animism, Confucianism, and Buddhism. The "Four Noble Truths" of Buddhism are:

1. Now this, monks, is the noble truth of pain: birth is painful, old age is painful, sickness is painful, death is painful, sorrow, lamentation, dejection, and despair are painful.

2. Now this, monks, is the noble truth of the cause of pain: the craving, which tends to rebirth, combined with pleasure and lust, finding pleasure here and there, namely the craving for passion, the craving for existence, the craving for non-existence.

3. Now this, monks, is the noble truth of the cessation of pain: the cessation without a remainder of craving, the abandonment, forsaking, release non-attachment.

4. Now this, monks, is the noble truth of the way that leads to the cessation of pain: this is the noble eightfold way, namely, right views, right intention, right speech, right action, right livelihood, right effort, right mindfulness, right concentration.[9]

Buddhism consists not only of principles of religious beliefs, but also teaches people to understand human behavior. Buddhists maintain that religion is a part of life after death; therefore, religion should not be in conflict with cultural systems and family institutions during life prior to death.

Hmong Christians

Jesus Christ or Jesus of Nazareth (4 B.C.-A.D. 29) was the founder of Christianity. Some small percentage of the Laotian population believes in Christianity because Europe and North America introduced Christianity to Laos late in the 19th century.

According to Rev. Char Yer Soung and Rev. Timothy T. Vang, District Director of Education and District Director, respectively, of the Hmong District of the Christian and Missionary Alliance Church, Brighton, Colorado, the numbers of Hmong people who believed in Christianity in Laos from 1951 to 1988 are estimated as follows:[10]

Year	Numbers
1951	2,300
1954	5,000
1960	7,000
1969	10,000
1975	15,000
1988	15,000

In the United States in 1987, there were about 17,131 Christian members, 61 churches, and 64 pastors in the Hmong District of the Christian and Missionary Alliance.[11] In 1990, this increased to about 19,000 Christian believers. From Laos to the United States, a total of about 34,000 Hmong people believe in Christianity.

The slow growth in the number of Christians among Hmongs is due to the opposing forces of other religious traditions. Indeed, many important reasons and obstacles have caused Hmongs to abandon Christianity. Some of these reasons can be explained by cultural relativism, ethnocentrism, family traditional structures and social customs, and economic and political variables. Conflicts in Hmong society today arise from critics who argue for belief in Christianity and those who argue for belief in the older religions.

Hmong Christians believe that the "Ten Commandments" of Exodus 20:3-17 teach people to become good Christians and good citizens. Hmong Christians believe that these commandments are principles of God. Therefore, they believe that the Ten Commandments are not only principles of God, but are laws to regulate human behaviors and actions. Hmong Christians maintain that those who break these commandments violate the laws of God, and so will receive punishment by God.

Conclusions on Religious Beliefs in the Hmong Culture

Most Hmongs are not dogmatists and consider religious dogmatism as useless because religion is a matter of life beyond death and because dogmatism can obstruct good relations and cultural bonds that hold Hmongs together. Therefore, Christian Hmongs are not expected to criticize shamans and shamans are not to criticize Christians.

Culture Related To Law

For Hmongs, law is based on cultural principles. The law of the Hmongs is primarily an unwritten law. This unwritten, or common, law has developed over the centuries by incorporating many influences. While variety still exists in various locations, a typical general sketch of Hmong political organization includes these systems.

1. Heads of the families.
2. Leaders of the clan systems.
3. Leaders of the villages (*nai ban*).
4. Leaders of the independent system.
5. Canton chief (*tasseng*).
6. District chief (*chao muong*).
7. Governor of a province (*chao khoueng*).

In Laos, civil cases were decided by the heads of the families, leaders of the clan systems, villages, and the canton chief. Family disputes and divorces were reviewed and decided by heads of the families and clan leaders before the cases were referred to the canton chief. A few then went on to the district chief or *chao muong*. In past decades, very few civil cases went to the governor of a province. There were 16 provinces in Laos before 1975.

In order to be leaders of the families, the clan systems, or governors in Laos, individuals had to be good leaders and knowledgeable of legal and cultural systems, learned through the clan structure and family socialization. The Western equivalent is the philosopher king of Plato, the Greek philosopher. Grandparents pass knowledge, wealth, property, and leadership structures to parents, and parents, to their children. Leaders and intellectuals had to memorize almost everything; this method required good mental abilities and recollection. The common, or unwritten law, of Hmongs can be called legal memory law.

Some Unwritten Codes of Conduct of Hmongs

These previously unwritten codes guide conduct within Hmong societies:

1. Wives must respect their husbands.
2. Women must respect men.
3. Young people must respect old people.
4. Young brothers must respect the elder brothers.
5. People must respect their leaders and authorities.
6. Children must obey and respect their parents.
7. Leaders must respect the general public.
8. Parents should fulfill their proper roles.
9. Children should fulfill their proper roles.
10. Leaders should fulfill their proper roles.
11. Students must respect their counselors, administrators, school teachers, and professors.
12. People must have self-discipline.
13. People must have self-respect.
14. People must have the right conduct and action.
15. People must have the right views.
16. The clan leaders must follow the clan systems.
17. Family members must follow family structure and its disciplines.
18. People must respect others as well as themselves.

Some Unwritten Marriage Customs

The following principles are the unwritten marriage customs of Hmongs:

1. Minimum marriage age is between 14 and 18 years old without consent of parents.

2. Below 14 years of age, consent and approval from parents or guardians is required.

3. The form of polyandry in which a wife may have more than one husband at the same time is prohibited.

4. The form of polygamy in which a husband may have more than one wife at the same time is legal in Laos.

5. Adultery by the wife is unacceptable. Punishments shall be imposed against the guilty parties.

6. A form of *zij pojniam* or "capture" is allowed. The boy or man may take the girl or woman who consents to go with him. It is not a kidnapping. The groom or his family shall report to the parents or guardians of the bride within 24 to 48 hours of the "capture."

7. The groom's side has to pay all wedding costs.

8. Parents and clan leaders of the groom go to the house of the parents of the bride to arrange marriage agreements.

9. The female has the legal right to follow her boyfriend to his house. This is *raws txiv yuav*, that is, the female is willing to marry the boyfriend.

10. Marriage is likely when the male has had sexual intercourse with the female and she has evidence that she is pregnant because of the relationship. In this case, the male will be responsible for the costs of the baby born if he does not marry the female.

11. It must be announced by parents, relatives, and leaders of the wedding that a specific couple is husband and wife from this date onward.

12. A marriage certificate is issued by the parties concerned.

13. No one should intervene in the couple's social and marriage affairs.

14. Parents and clan leaders are authorities on marriage matters.

15. Wife and husband are to marry for a lifetime.

16. The wife is under a duty to submit and obey the reasonable governance of the husband.

17. Under reasonable circumstances, the husband has the right to socialize alone, that is, without the presence of his wife and/or family.

18. The husband has the obligation to support his wife and children.

In Laos, the above principles have been commonly practiced by Hmongs for many centuries. However, Hmongs that live outside of Laos practice only those principles that are within the legal parameters of the countries in which they reside.

Some Unwritten Divorce Customs

The following unwritten customs govern divorce or termination of marriage:

1. Adultery by the wife is grounds for divorce.

2. Evidence of adultery must be given.

3. The husband and wife live apart for a period of time.

4. The wife receives no support from the husband for reasonable claims.

5. Mental cruelty and serious problems of physical inabilities of each one, or death are grounds for divorce.

6. Both the husband and wife agree to divorce.

7. One side is for divorce.

8. The guilty party shall not receive property, alimony, money, child support, or children.

9. The innocent party shall receive property, children, and family inheritance.

10. The innocent husband shall receive the male children. Under certain circumstances, the husband has to pay child compensation, which may be a small monetary sum, but is usually a portion of the household property.

11. The innocent wife shall receive the female children. Under certain circumstances, the wife has to pay child compensation, which may be a small monetary sum, but is usually a portion of the household property.

12. The guilty party may have to leave the house without properties or other means. This is more likely in the case of a guilty female.

13. Potential divorce cases are recommended to parents, relatives, brothers, and clan leaders of both sides for review.

14. The party who violates the family traditional system the most will lose the divorce case.

Hmong Family Experiences and Breakdown in the United States

Hmongs have problems with cultural integration, assimilation, and acculturation within the American culture. The major frustrations of most Hmong adults, men and women, in the United States involve the problems of family breakdowns, conflicts between the generations, and Hmong cultural relativism and ethnocentrism versus the American legal system and culture. Changing family roles cause a shift of powers from men to women and husbands to wives. Many women take the opportunity to break away from Hmong traditional systems. In the past decade, many women demanded divorce without justification under Hmong customs. Some women committed adultery. Many Hmong men have committed suicide because of family breakdown and divorce. In local and state laws of America, voluntary adultery is an individual matter. The Hmongs evaluate adultery in terms of how it affects the collective good.

In the Hmong culture and system, divorces are not considered to be in the common interest of Hmong society. Family traditional poems state that when you marry, it is for a lifetime. Mostly, persons who divorce cannot easily marry another person.

The young generation and the American-born Hmong can integrate, acculturate, and assimilate within the American culture and system faster than the older generation. The older generation prefers to pass on cultural traditions to the young whenever possible. However, their cultural relativism and ethnocentrism are somewhat contrary to the American culture and legal system. Many Hmong-American men, clan leaders, and educators argue, for example, that the civil law of the United States is an unequal law because divorce law grants more powers to women than men. The criminal justice system and criminal law in the United States may be good for American people, but cannot deter murders and crimes. Therefore, some Hmong critics recommend a reform of the civil law, family law, divorce law, and criminal law. Many Hmongs feel that American laws are too lenient and, if they were stricter, fewer people would violate them. This does not mean that they will isolate themselves completely from American cultural, social, customary, economic, education, and political systems. It means that when they are at home, they are expected to behave according to their cultural interests and traditions. When they are outside of the home, they are expected to behave as "American" as they can. America is a land of refugees and immigrants who brought rich cultural heritages and social values to America. The Hmong want their contribution to be recognized, too.

The Hmong Council in the United States

In December 1982, about 1,000 Hmong people, students, intellectuals, community and clan leaders, along with Hmong leader General Vang Pao, attended the Hmong Community Development Conference in Fresno, California, where they formed the Hmong Council to promote the interests of Hmong-Americans and refugees in the United States. On December 26, 1984, Vang Pao and 18 clan leaders from around the United States signed the Articles of Incorporation and the By-Laws of the Hmong Council in Merced, California. On June 17, 1985, the Secretary of State of California officially approved the By-Laws and Articles of Incorporation of the Hmong Council. Therefore, the Hmong Council became a national non-profit council that represents Hmong people in the United States.

The preamble to the by-laws of the Hmong Council states the national purposes of this organization:

> The Corporation is organized to encourage or assist and charter the establishment of, and oversee, govern, and assist the operation of Hmong Councils in the United States and worldwide. This Corporation shall provide assistance and authority in the form of financing, counsel, direction and encouragement to establish and successfully operate Hmong Councils, which will assist Hmong people to adjust harmoniously to the American culture while maintaining their Hmong culture, identity, and heritage.
>
> The Hmong Council shall be operated and governed by free, democratic principles so as to ensure equal opportunities in the participation in the affairs of the Hmong Council, to provide equal protection, and to receive equal and just benefits.[12]

Article II of the Articles of Incorporation of the Hmong Council, Inc., states that "the primary public and charitable purposes of the Corporation include the operation of a non-profit organization for social, economic, and legal education and counseling and cultural activities for Hmong people in the United States and worldwide."[13]

The real key to this council is to lead Hmongs to become productive citizens, economically self-sufficient, and to adapt to the American system while maintaining Hmong heritage and cultural principles. The Hmong Council is composed of six administrative committees and branches: Administrative Com-

mittee, Legal Counseling Committee, Hmong Council Education Committee, Economic Development Committee, Census and Public Relations Committee, and Social and Cultural Committee.

The Hmong Council is committed to achieving the following services:

1. Economic development and job training.

2. National education development and counseling.

3. Legal counseling.

4. Language translation and bilingual programs.

5. Public bureaus for information and community referral.

6. Community and refugee advocacies.

7. Cultural and recreational activities.

8. Transportation for low income families.

9. Public bureaus for liaison with local, state, and federal governments.

10. Public bureaus among the Hmong-American communities and for private parties or individuals concerned with Hmong refugee issues.

11. Public bureaus for collecting Hmong national population census data and national education statistics.

12. Public bureaus for conducting the Hmong Happy New Year festival and celebration.

13. Public bureaus for solving and counseling some minor social problems and legal issues that need not go to American courts.

14. Public bureaus for helping and leading the Hmong people to learn, adapt to, and understand American laws, customs, systems, and ways of life.[14]

Hmong Council Education Committee

In September 1986, the Board of Directors appointed Vang Pobzeb to form and head the Hmong Council Education Committee, which was officially established on January 9, 1987. One of the seven principles of the Education Committee states that the purposes of the committee are "to search for a new strategy and action which will lead and help the Hmong Americans and refugees to adjust and adapt to the American educational system, rich cultural heritage, society, democratic system, and ways of life."[15] The Hmong Council Education Committee is one of more than 100 national education committees and Hmong student associations around the United States created to promote quality educational goals and opportunities for Hmong-Americans in the United States.[16]

Legal Counseling Committee

The Hmong clan leaders are responsible for legal counseling on cultural conflict, adaptation, assimilation, acculturation, and integration and social problems related to marriage and divorce or animism and shamanism practiced by many Hmongs. However, most civil and criminal cases are

referred to the American courts. In the past decade, the American courts referred some divorce and marriage cases to the Hmong Council and clan leaders to handle.

For instance, in August 1988, the Denver divorce court dropped the divorce case of a Hmong man and woman, stating that, "It should be resolved by the Hmong community, using their own values and traditions which they have developed over the years."[17] The Hmong clan leaders in Denver decided in this case that both sides lost (both were guilty) because they had violated Hmong marriage law and cultural principles. (The Hmongs' unwritten law of self-punishment implies that if there is no legitimate reason for granting a divorce, then the parties' reputations are ruined and their chances for remarrying within the Hmong community are extremely small.) However, if the husband had taken the case to the Hmong clan leaders to solve, he might have won the case because the wife violated the Hmong marriage first, and, therefore, he might have had a legitimate reason to get a divorce.

Thus, under certain circumstances, Hmong clan leaders and cultural legal principles are still useful in solving the problems of Hmongs in the United States. However, serious civil cases are not decided by clan leaders because they do not have the full legal power to handle the cases as they did in Laos.

Majority and Minority Relations in the United States

Majority and minority peoples in the United States are equal under the law, but not equal in practice. The minority population is about 25 percent of the total United States population. Hmong- and indochinese-Americans and refugees are part of the minority. The real issues of relations between the majority and minority in America are the struggles for jobs, opportunities, goods, and services.

The Fair Employment Practices Commission of 1943; Equal Pay Act of 1963; Economic Opportunity Act of 1963; Civil Rights Act of 1964; the Equal Employment Opportunity Act of 1972 and affirmative action law prohibit the practice of racial discrimination and prejudices that exclude all members of a group from certain rights, opportunities, and privileges. However, there are problems of implementation of these laws because discrimination and prejudice still remain in the system. Many Hmong-Americans and refugees are qualified to attend professional schools, such as medical school, law school, and doctorate programs in professional fields, but are not admitted. Some individuals who are admitted face difficulty in surviving the programs because some faculty members have found alternatives to fail them and to disqualify them in their graduate studies.

In February 1990, the Hmong District Christian and Missionary Alliance Church of Brighton, Colorado, planned to purchase about 320 acres of land in Elbert, Colorado, for religious buildings, camps, and associated purposes. Unfortunately, American residents and Elbert County officials voted to deny Hmongs the opportunity to purchase the land.[18] Hmongs and critics argued that the denial was racial discrimination. Some critics believed that the denial violated the First and Fourteenth Amendments of the U.S. Constitution. The First Amendment guarantees freedom of religion for all citizens in America. The Fourteenth Amendment guarantees equal protection for all citizens.

In April 1990, police authorities and law enforcement officials at the University of Colorado at Boulder charged two Hmong college students with "...trespassing and destruction of public property" at the university. Critics, clan leaders of the Hmong community, and students saw the charge as a result of racial discrimination and prejudice against Hmongs. The prosecutors defended that it was a result of "cultural miscommunication."[19] Under the Communist Pathet Lao, Hmongs have been accustomed to discrimination for political or religious reasons, but racial discrimination and prejudice are new experiences for Hmong-Americans and refugees in the United States.

Job discrimination, the problem of equal pay for equal work, and work opportunities for Hmongs still remain to be solved. In 1989, the unemployment rate in many Hmong-American and refugee communities in the United States was about 75 percent. About 65 percent to 80 percent of Hmongs live

below the poverty level, languishing on welfare. Indeed, Hmongs really want to work, but they cannot find employment because employers and companies do not give them the opportunity to work. Language barriers or cultural differentiations are not the real issues in employment. The real issue is discrimination.

The U.S. government has excellent laws to protect the rights and equal opportunities of all citizens in the United States. However, there are major problems of enforcement and implementation because people do not fully comply with the laws. Hmong-Americans and refugees do not like to complain to the government or law enforcement agencies about discrimination and prejudice against them. They do not like to sue employers, companies, agencies or private foundations, and administrators because opportunities are denied to them. Hmong people do not like to take someone to court because of job, opportunity, or school admission discrimination against them. Their cultural concepts, derived from Confucianism, Buddhism, and Christianity, say, let them discriminate against us. We do not discriminate against them. Let them practice unfairly against us. We do not take action against them. Hmongs would prefer to see the local, state, and federal governments set up new rules for compliance with the excellent laws.

The real issues of cultural differentiation and ethnocentrism in the United States have to be separated from other factors that cause discrimination and prejudice. The problems of unequal opportunities are neither the problems of the Republican Party nor the problems of the Democratic Party. Indeed, these are the problems of the United States. Therefore, liberals and conservatives, majority and minority must cooperate and unify leadership to solve these problems.

Academic Freedom and Hmong Students in the United States

Hmong culture has principles governing the behavior of students toward teachers and their peer groups in the system. The five unwritten codes of educational discipline are:

1. Children or students must commit to learn and to succeed in school.

2. Parents must be closely involved with children regarding education.

3. Parents and guardians have the authority to discipline children according to any appropriate measure. Discipline is not punishment and child abuse.

4. School administrators, counselors, and teachers have the right to discipline students.

5. School administrators and parents must share discipline when it is necessary. Students must respect teachers and school administrators.

Hmong-American parents raised in Laos are accustomed to methodologies of discipline that include private and public counseling. For instance, those students who refused to go to school for three days were punished by a grade decrease. Students had to do community work in school and public areas. Troublemakers were punished by the cessation of financial support and other appropriate measures. Children and students who did not obey the rules of the teachers and parents had to be counseled by clan leaders or special counselors. In the Hmong cultural, legal, and traditional law, parents have the right to discipline their children without criminal charges. The civil law in Laos did not criminalize parental discipline as a wrongdoing.

In Laos, parents granted educational powers to teachers. Hmong parents assume that teachers have the right to teach and to discipline honestly their children. Students have the responsibility to learn and to succeed.

In the United States, many Hmong students have dropped out of high school in the past decade because of the lack of discipline expected by Hmong parents. In the past five years, many Hmong parents disciplined their sons and daughters on educational objectives. Parents were charged by police forces and courts with "child abuse" and torts. Consequently, these parents no longer discipline their children at all, even though they know that the children have missed school for many days and weeks.

Mostly, Hmong students do not complain to the high school principal or college dean that they receive low grades, even though they are good students. They rarely raise a hand to say they know the answers to the questions or mathematical problems until the teacher asks them to respond. They prefer another kind of classroom discipline.

In the past 10 years in the Californian Hmong communities, about 70 percent of the young people have not completed high school. About 80 percent of high school graduates do not or cannot go to colleges or universities in the state of California for many reasons: financial problems, family problems, economic problems, social and cultural problems, and individual and admission problems. The Hmong communities in Wisconsin, Minnesota, and Colorado are in a better position in educational development because school dropout rates are low.

The Hmong disenchantment with the educational system is not a particularly ethnocentric problem. The dropout rate is a national problem. Over 28.9 percent of the high school students in the United States dropped out in 1988. More than 25 percent of the high school students in Colorado dropped out, 21 percent in Utah, 39 percent in Arizona, 24 percent in Nevada, 34 percent in California, and 42 percent in Florida.[20]

In September 1990, United States Secretary of Education Lauro F. Cavazo asked parents [to] give more assistance to teachers[21] in order to raise low educational levels in the United States. From the perspectives of Hmong education experts, in order to convince the Hmong-American parents to assist teachers, counselors, school administrators, and government on educational reform and development in America, American family law and education law must be changed. This means that parents must have some minor legal power to discipline children and that law enforcement agencies, schools, and parents share educational discipline and development in the right manner in an acceptable direction. All this means is that the educational system and laws are at fault, not the students.

Conclusion

In Hmong traditional principles, culture determines and guides law. Heads of the family, leaders of the clan systems, villages, cities, towns, and provinces decide the legal issues. Hmong culture also determines behavior and attitudes in education and vis-à-vis the world. Education for Hmongs is the transmittance of traditional culture and law as well as the key to becoming economically self-sufficient, productive, and good citizens.

Endnotes

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5. Cheng Te-k'un, *The World of the Chinese: A Struggle for Human Unity* (Hong Kong: The Chinese University Press, 1980), pp. 113-125; S.A. Nigosian, *World Faiths* (New York: St. Martin's Press, 1990), pp. 376-389; *Republic of China: A Reference Book, 1983* (Taipei, Taiwan: United Pacific International, Inc., 1983), pp. 37-40; and Huston Smith, *The Religions of Man* (New York: Harper and Row Publishers, 1986), pp. 246-247.

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9. James W. Dye and William H. Forthman, *Religions of the World* (New York: Appleton Century Crofts, 1967), pp. 106-108; Huston Smith, pp. 121-125), and Diana St. Ruth, *An Introduction to Buddhism* (Leicester, Great Britain: Buddhist Publishing Group, 1988), pp. 36-62.

10. Char Yer Soung, "Hmong Church History: Laos," Hmong District of the Christian and Missionary Alliance Church, Brighton, Colorado, 1990, pp. 1-15; Timothy T. Vang, pp. 1-21.

11. Ibid., p. 20, and also see *Moo Zoo Tshwjxeeb* (July-September 1989), vol. 6, no. 3, p. 24.

12. "Articles of Incorporation" and "By-Laws of the Hmong Council, Inc.," December 26, 1984 and see also Vang Pobzeb, *The Politics of Hmong Organizations in America (Denver, CO: Hmong Council Education Committee, July 1990). [Vang Pobzeb has been actively involved in community service within the directions of the Hmong Council in the past decade. He attended the conference of December 1982 which formed the Hmong Council. He is the first candidate among Hmong students in the United States and the world to receive a Ph.D. in World Politics.]*

13. Ibid.

14. Vang Pobzeb, "The Purposes of the Hmong Council, Inc.," Denver, CO: Hmong Council Education Committee (July 14, 1990).

15. Vang Pobzeb, *The Politics of Hmong Organizations in America*, (Denver, CO: Hmong Council Education Committee, 1990), p. 1.

16. Ibid., pp. 1-12 and see also "Hmong Organizations in the U.S.," *Southeast Asian Refugee Studies Newsletter* (Fall 1990), vol. 10, no. 4, p. 7.

17. Steve Garnaas, "Immigrants Guided by Tradition," *The Denver Post* (August 28, 1988), pp. 1-B and 10-B.

18. *The Denver Post* (February 25, 1990), p. 2-B.

19. *Colorado Daily* (May 11-13, 1990), vol. 97, no. 211.

20. *High School Dropout Rates, 1988," The Chronicle of Higher Education Almanac* (September 5, 1990), pp. 3-5.

21. Robert L. Jackson, "Report Card Gives Schools a Poor Grade," *Los Angeles Times (September 27, 1990), p. 22.*

1 BECOMING AMERICAN

Introduction:

This lesson uses a video, *Becoming American*, to introduce students to Hmong culture as it existed before the Vietnam War, to changes that resulted from Hmong support of the U.S. effort in Indochina, and to the transition of Hmong refugees in "Becoming American" following years of waiting in Thailand.

Objectives: At the end of this lesson, students will be able to:

1. Identify fundamental features of traditional Hmong culture.

2. Explain how support of the U.S. war effort in Indochina affected the Hmong people.

3. Analyze conflicts that immigrants from Hmong society face as refugees in the United States.

Time: 2-3 class periods

Materials: Video *Becoming American*, available from New Day Films (22 Riverview Drive, Wayne, NJ 07470) or on loan from SSEC; newsprint for small-group reports.

Preparation: You may wish to invite a Hmong refugee to join the class for the second viewing and to respond to questions.

Procedure:

1. Explain to the class that they will be following the experiences of the nine-member Ham Xyooj family as they leave a refugee camp in Thailand for a permanent home in the United States.

2. Assign students to four groups, each having a special viewing assignment:

Group 1: Explain Hmong lifestyle in the highlands of Laos and other countries in Southeast Asia. Collect evidence about the economy, family structure, religion, history, and values.

Group 2: Explain why the Hmong would join U.S. efforts to defeat North Vietnam and their contribution to the war effort.

Group 3: Describe the options that Hmong people had when the United States withdrew from Vietnam and describe life in a refugee camp.

Group 4: List things about the United States that Hmong refugees may find confusing or contradictory to their way of life.

3. Rearrange seating so that students are sitting with those with a like viewing assignment. Allow a few minutes of discussion among each group regarding the task and answer any questions they may have. Tell students to concentrate on the video while watching; you will provide time following the film for them to make notes to share with their group.

4. Following the video, students will need time to organize information that is responsive to their viewing assignment.

5. On day 2, have small groups meet to pool information. Newsprint should be provided each group so they can organize a report to the class. Ask each group to report briefly on what they found and to list questions, new vocabulary words, and discrepancies that arose from the discussion. Use the **Teacher Background Information** to facilitate reports and ask follow-up questions.

6. Show the video a second time for the purpose of confirming information gathered by the small groups and to explore answers to questions raised by the material. Review vocabulary words.

7. Ask the class some of the following questions to help them analyze the experience of the Hmong in making the transition to the United States:

- Which traditional Hmong qualities may be admired by U.S. citizens?
- Which practices may create problems for Hmong people?
- How does U.S. society threaten the continuation of Hmong culture in the United States?
- Which members of the family seem to have the most difficult adjustments? the easiest adjustments?

8. Conclude the lesson by asking students to assume the position of a resettlement counselor. What can schools, businesses, churches, and local governments do to assist Hmong people in making the transition to U.S. society?

Teacher Background Information:

The following questions and sample answers may be useful in discussing small-group reports:

Group 1: This group's report should refer to patriarchal society, economy based on farming (including the poppy from which opium is made), limited written language, strong sense of family and community, strong spiritual life that includes ancestor worship and the use of shamans (religious leaders).

Follow-up questions:

- How would an agrarian society such as the Hmong benefit from large families? (The larger the family, the more workers to plant and harvest the crops.)
- How might Hmong society benefit from a man having more than one wife? From marrying at an early age? (More children and children sooner, since life expectancy is not high.)

Group 2: This group's report should mention General Pao and the work of Hmong men and boys as young as 12 as guerrilla fighters. Hmong were fighting to protect their way of life and saw the United States as sharing their interest in freedom. Tens of thousands of Hmong died in the war.

Follow-up question:

- Why were the Hmong people a threat to communism? (They had a strong history of resisting domination. The government of Laos did not want challenges to their leadership.)

Group 3: This group's report should explain that the Hmong were hated by the communists. As refugees, they had very few options: they could stay and risk torture and death, stay in refugee camps where there were no guarantees, or immigrate to a third country where they did not know the language.

The refugee camps were uncomfortable with crowded conditions, lack of plumbing, food rationing. Many died during the days and months spend in the jungle trying to get to Thailand.)

Follow-up questions:

- What feelings did the Hmong have about leaving Southeast Asia and their families? What if you faced death or moving to a place where you did not know the culture and language? (Students should describe farewell scene at the refugee camp.)

Group 4: This group's report should discuss learning English, dealing with household technology, getting food from stores instead of raising it, dealing with money instead of barter, living in a society where there is crime, schools with new rules.

Follow-up questions:

- How did the U.S. people react to the Hmong? (Varied – some teach English and help with resettlement the clerk in the grocery seemed impatient when the man didn't understand money.)
- Some Hmong women featured in the film were successful in selling needlework. How might their success be received by their husbands and fathers? (Many Hmong men felt worthless and depressed when women got jobs before them. They were used to being the leaders and decision-makers.)

2 MAPPING HMONG HOMELANDS

Introduction:

This mapping exercise is designed to familiarize students with the political and geographic features of Laos, the country that most Hmong-Americans or their ancestors come from, and to help students relate geographic information to the history and culture of the Hmong people. The geographic information will help students understand how the Hmong were able to maintain their society and avoid much of the cultural borrowing that is characteristic of most modern societies.

Objectives: At the end of this lesson, students will be able to:

1. Form hypotheses about the reasons people live where they do.

2. Locate significant political and geographic features important in recent Hmong history.

3. Make predictions about the Hmong lifestyle based on data about the topography and vegetation of their homeland.

Time: 1 class period

Materials: Copies of Handout H-1 for all students; large world map or map of Southeast Asia to post.

Procedure:

1. Provide each student with a copy of Handout H-1, and direct their attention to the topographical outline map of Southeast Asia. Ask students to imagine this land vacant. If they were to develop a "fantasy land" in one area, where in the region would they settle? Accept and discuss student selections. Point out the location of Laos. How many people selected Laos as a location? (Probably very few did.) Discuss some of the limitations that Laos would have. (Lack of port, mountainous terrain, rainforests would limit transportation and communication.) Explain that Laos is approximately the same size as the state of Minnesota. Approximately 3 million people live in the country. Ask students to hypothesize about the economy and lifestyles in a mountainous, landlocked country.

2. Have students label two key features of the Laotian landscape, the Annamite mountain range and the Mekong River. Explain that the mountain range covers 85 percent of the terrain. The best farmland is that along the Mekong River. The land is controlled by the lowland Lao – the group that controls the country both economically and politically. The Hmong live in the northern mountainous area of the country. Why would they choose to live there?

3. Explain that the Hmong were pushed to the least desirable mountainous land by their enemies centuries ago. They learned to live on land that others did not want. They chose to stay there because others left them alone and they could live as they pleased. They learned to make their own clothes from material woven from the hemp plant. Their diet included rice, corn, and vegetables as well as chicken, beef, and pork. They learned to be self-sufficient (to do without any products from the outside world) except for one commodity – salt. They traded rice for salt with their closest neighbors.

4. On the map on the second page of the handout, have students label Laos and the countries surrounding it. (China to the north, Vietnam to the east, Cambodia on the south, and Burma to the northwest.) Why do students think that the U.S. military was interested in Laos during the Vietnam war? Explain that the Hmong disliked the Communist government of Laos because their policies interfered with the Hmong culture and lifestyle. The Hmong were used to the climate, knew the area, and were valuable guerrilla soldiers who shared the U.S. military goal – defeat of the Communists.

5. Have students mark two key locations on the map as you tell why they are important to the Hmong (use the wall map to show students the appropriate locations):

Xieng Khouang: This province was 46 percent Hmong in 1969. While Hmong live in other areas of Laos, Long Cheng, the "capital city" of Xieng Khouang, was dominated by Hmong culture and became a secret city during the Vietnam war. The families of Hmong soldiers gathered here to wait for the fighting to end. Because the Hmong could no longer raise food, the U.S. military dropped rice to feed the families of their Hmong allies.

Ban Vinai: This refugee camp, located in Thailand, is home to thousands of Hmong refugees. For some children, this is the only home they have known. Their parents await word that they can join family members in a new homeland.

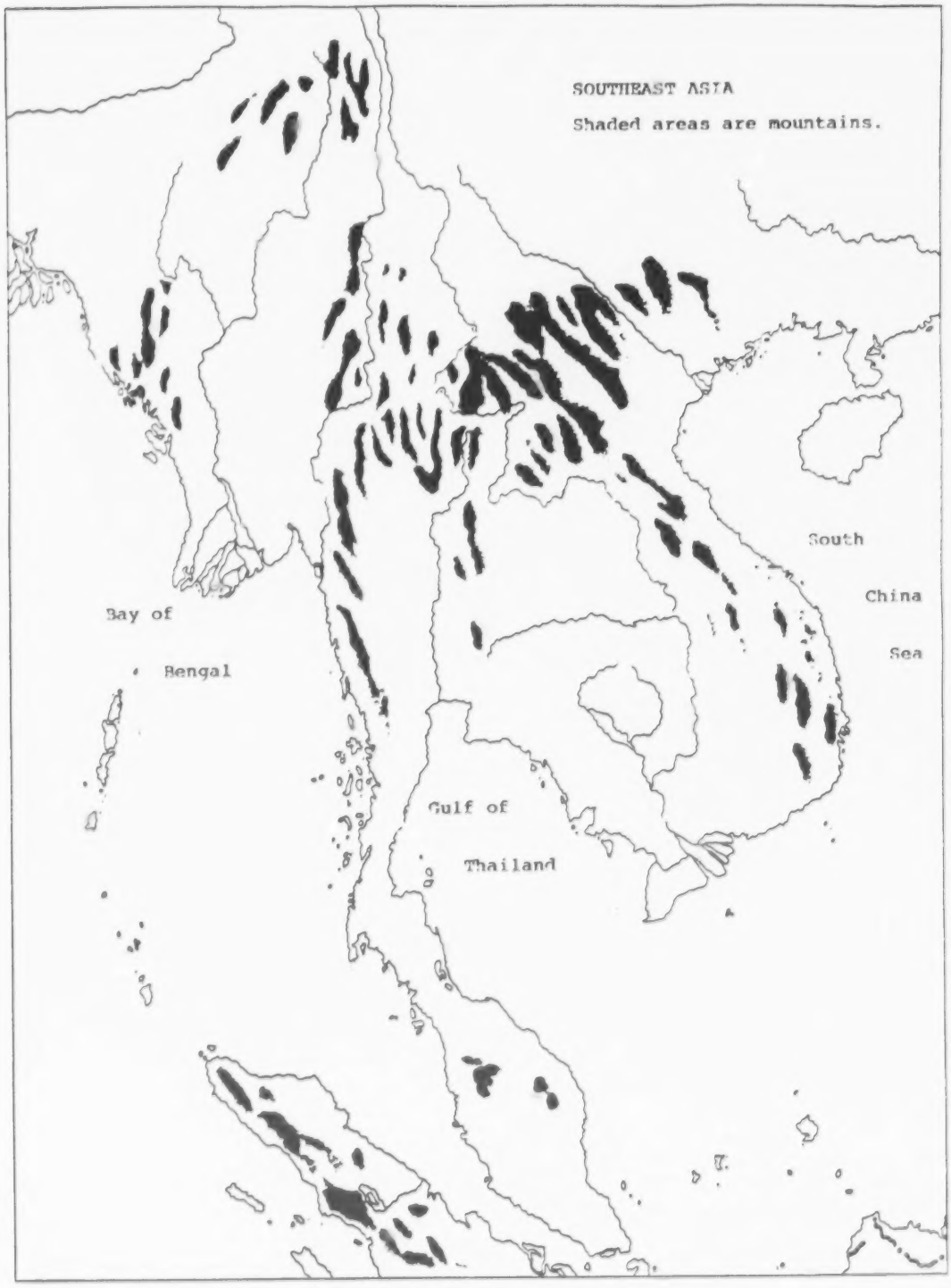
Teacher Background Information:

The following sources and map may be useful to teachers in conducting or expanding on this lesson:

Jonas Vang Na Vangay, *Hmong Parents' Cultural Attitudes and the Sex-Ratio Imbalance of Hmong Merced High School Graduates* (Mong Pheng Community, Inc., 1989).

Bruce Thoupaou Bleatout et al., *Handbook for Teaching Hmong-Speaking Students* (Folsom, CA: Folsom Cordova Unified School District, 1988).

MAPPING HMONG HOMELANDS



3 HOW TO GET ALONG IN HMONG SOCIETY

Introduction:

The Hmong people have no written code of laws, yet the customary laws of their society are very clearly defined and communicated to all members. Within the native homeland, the highlands of Southeast Asia, the rules have worked well for centuries. For Hmong trying to preserve their culture in the United States and adapt to life in a technologically advanced society, the customary laws are often questioned or challenged by outsiders. This exercise is designed to help students step outside their personal and societal values and apply Hmong rules related to authority and justice to hypothetical situations.

Objectives: At the end of this lesson, students will be able to:

1. Describe Hmong customs and values within the context of Hmong history and experience.

2. Explain why decisions made in the context of Hmong culture and history are very different from decisions made within the context of the U.S. history and experience.

3. Hypothesize about some of the conflicts and problems that Hmong people might have in adapting to the rules of our society.

Time: 1-2 class periods

Materials: Copies of Handouts H-2 and H-3 for all students.

Preparation: Read the **Teacher Background Information** and "Rules for Getting Along in Hmong Society" (Handout H-2). You may wish to invite a resource person from the Hmong community to assist you in presenting the lesson. The lesson assumes that students have viewed *Becoming American* or have some background on Hmong history and culture.

Procedure:

1. Begin the lesson by asking students to quickly count how many people are part of their extended family – uncles and aunts, cousins and grandparents. Now ask them to imagine that all of those people live on their block or within the same neighborhood. How do they think their lives would be changed? What would some of the advantages and disadvantages be? Explain that this is how life is for most Hmong families.

2. Distribute Handout H-2 and discuss each rule, using selected information from the **Teacher Background Information.**

3. Once students are comfortable that they understand Hmong customary law, provide each student with a copy of Handout H-3. Have students quickly read each situation and make a decision that would be appropriate within the context of Hmong history and custom. (This can be done as homework.)

4. Have students form small groups to compare their answers. Each group can be assigned one or two cases to discuss and report an appropriate Hmong resolution to the class. The group should also discuss how the situation would probably be resolved in the United States. What consequences may result from Hmong practice of traditional ways in the United States?

5. Conduct a large-group discussion of the various cases. Use the background information for the hypotheticals to enrich or correct student answers. Use the following questions to draw out cultural comparisons:

- What similarities and differences do you see between U.S. "rules" and Hmong "rules"?
- What "rules" from Hmong culture are most likely to create conflicts for Hmong living in the United States?
- Which practices in the United States are most likely to create conflicts for Hmong?
- Did you unconsciously use the rules for getting along in your own society?
- What problems would you have in adapting to Hmong ways of thinking?

6. Write the word *bicultural* on the board. Explain that bicultural describes the ability to function effectively in two culture groups. Explore some of the conflicts that may occur as Hmong people adapt to U.S. society. As an example, you might explain that in Hmong society, a compliment would be very embarrassing. One would not want to stand out from the group. In U.S. culture it is appropriate to graciously accept a compliment; to reject it would be rude.

7. The challenge of being bicultural can be explored with the following exercise. Have students brainstorm a list of behaviors that a Hmong-American teenager would need to be successful at home (obedience, do not question elders, stay within the Hmong community, no interracial dating, no make-up), and a second list that they would need to be successful at school (give opinions in class, wear stylish clothes, participate in extracurricular activities). Ask students what adjustments they would need to make to live in one culture at home and another at school.

8. Explain that, typically, Hmong males have had more difficulty learning the language, getting jobs, and generally adjusting to life in the United States than Hmong women. What have students learned about the Hmong that would explain this fact?

Teacher Background Information:

The following background on the rules for getting along in Hmong society may be useful in conducting class discussion. Explain that the rules are described for traditional society and will not apply uniformly to Hmong in the United States, where many practices are rapidly changing.

Rule 1: There is strong social pressure in Hmong society to understand and live up to the traditions established by ancestors. Ancestors are so important that they are worthy of worship. Their experiences shape the Hmong view of the world. Hmong communicate with ancestral spirits through retelling of their experiences as folktales and through their religious leaders, called shamans. These folktales spell out the rules for behavior. Loyalty and responsibility are two themes that are particularly emphasized.

The Hmong stay in close contact with their ancestral spirits because they believe their ancestors influence the fortunes and behaviors of the society. Previous generations have successfully maintained the society in the face of adversity. They have passed on rules of group harmony that keep the family together. To lose these traditions is to have nothing left.

Rule 2: Each person, depending on his or her place in society, has certain obligations and modes of behavior expected of him/her. By following these roles, one feels a sense of belonging and accep-

tance. Hmong receive a great deal of comfort from the strict rules – rules that would seem oppressive to most people raised in the United States, a culture that takes pride in having few rules and giving individuals great latitude for creativity and encouragement to "do your own thing."

A good parent will use much discipline, particularly physical discipline, to emphasize adherence to rules. If young people rebel or question the rules, they will be severely disciplined and counseled by family members – particularly the father and uncles. The family will not give up until their point is understood and the young person conforms. They do not want to lose anyone to a lonely, bitter life. To be separated from one's family would be very depressing. Such a life would hardly be worth living.

Rule 3: Power and authority within Hmong society rest in the hands of males. The society has relied on the warrior skills of males to fight off aggressors. In contrast, females have been socialized to take responsibility for feeding the family and rearing children. Male authority is particularly relevant in defining relations between husbands and wives and parents and children. A good parent shows affection by expecting strict adherence to rules. Physical punishment of children, scolding, and nagging are acceptable ways to show concern for their welfare.

Girls are admired for demonstrating tolerance and patience. Females willingly sacrifice for their fathers, husbands, and in-laws. A wife may show respect for her husband by washing his feet and rising early so that a hot breakfast is ready when he wakes.

With respect to marriage, men (usually those with power and privilege) are allowed to have more than one wife; women are not allowed more than one husband. Marriage is for lifetime. The best age for marriage for women is between 14 and 18. Traditionally, if a couple divorces, the self-imposed punishment is to not marry again.

Rule 4: There is strong loyalty to the clan. The entire clan may be judged by your behavior. An unacceptable social act on your part will shame the entire clan. Your family and the clan elders will feel responsible for your behavior.

Hmong find U.S. (Western) ideas about self-fulfillment and happiness highly individualistic and therefore highly inappropriate. Rather, their code emphasizes the moral demands and sacrifice required by individuals to support the larger society.

For example, in traditional families, if a son or daughter were to break the marriage custom by choosing their own spouse or marrying someone other than Hmong, the parents would lose "face." The entire clan would feel shame if a Hmong child did not support/care for his/her parents in old age.

Rule 5: The elders in Hmong society have a heavy duty to bear, for they are responsible for the behavior of everyone in the clan. Looking at leadership from the other side, all members seek advice from elder, wiser people. They have a duty to their ancestors to carry on the tradition as it was passed on to them.

Rule 6: Hmong society is hierarchical. Power and authority reside with males and with seniority. The best chances for advancement come through solidarity with those who are closest to you in age and through blood relationships. Special rituals are held for a generation of brothers and cousins to create a strong bond among the extended family. If a man dies, his younger brother will marry the widow and bring her into his family. (She has the right to not marry him.) Success comes from being with family rather than individual recognition.

"Putting yourself down" is an appropriate way to respond to a compliment because you do not want to stand apart. Modesty is an important virtue.

Rule 7: Hmong people get much reward from doing what's best for their extended family. They do not believe that individuals are free to pursue individual dreams or interests without thought of what's best for the family. Decisions would be based on acting in a way that would please ancestors and fit the traditions. Individuals pay a heavy price for choosing directions that result in separation from family, jealousy, or embarrassment. To be isolated from the clan would mean a lonely, bitter life.

While we see life as a matter of individual fulfillment and self-determination, the Hmong find fulfillment within the extended family. Those families forced to leave loved ones in Asia when they moved to the United States feel enormous sadness. Some are dealing with the pain of having put their individual interests ahead of the group.

The following information will be useful in discussing resolutions to the hypothetical situations:

1. Song would have no right to complain about Kao's involvement with another woman. In fact, Kao has the right to have two wives. Song's responsibility would be to try harder to please her husband. Kao might seek advice from the elders if he wanted to break up the marriage. Since both are dependent on the children to care for them in their old age, they have much to gain from living with a less-than-perfect marriage.

2. Ly would place a higher value on his parents' wishes and not participate in the play. He knows that they do not understand how things are done. Getting a low grade may result in some sort of embarrassment to the family. He would see that his larger responsibility is to keep his friendships in the Hmong community and avoid extracurricular activities that will separate him from the Hmong community. He has avoided telling his parents about many of the classroom activities that involve participation. Their idea of being a good student involves listening and memorizing rather than giving opinions and role-playing, which are characteristic of his speech class.

3. Spirits are a powerful force in the Hmong world. Often, Hmong practices coexist with Western medical practice. In the absence of more scientific explanations for phenomena, Hmong rely on spiritual leaders for help. Chu would operate on the premise that it wouldn't hurt to supplement the doctor's advice with Hmong medical treatment. He would be afraid of offending the spirits. In the United States, it would be common to go to a slaughterhouse to get a pig. The head would be part of a ceremonial offering officiated by the shaman. The rest of the animal would be roasted for family and friends who come for the ceremony.

4. The shopkeeper would avoid calling the police regarding the crime. Rather, he would contact elders in the Lee family. The family would feel a loss of face as a result of the boy's behavior. They would offer to replace the radio and offer other types of compensation for the infraction.

5. Bao would follow her parents' wishes. She would like a college degree, but what use would it be if she were separated from the lifestyle and traditions of her people? At the age of 17, she is almost past the marriageable age. Hmong see little opportunity for female children beyond marriage and children. If Bao tried to find a husband after college, Hmong men probably would not be interested in her. To be cut off from her culture would mean a lonely life.

6. Ka would drop the class so that her husband doesn't lose face. Her stature in the Hmong community is based on that of her husband. She would invest in his future before she does her own.

7. Lia would respond by putting herself down. She might say "This old rag – I'm embarrassed to be seen in it." She could accept the compliment by making it a compliment to her clan: "This is something I bought to honor my grandparents." Fitting in is most important. If the compliment came from an American, she would probably be more accepting, since she knows that Americans usually respond with a thank-you.

RULES FOR GETTING ALONG IN HMONG SOCIETY

Rule 1: Traditions established by ancestors are the key to the success of the clan. Traditions must be followed and passed on to the next generation.

Rule 2: The most experienced members of your clan will carefully prepare you for the roles you are to fill. You are expected to faithfully perform each role as it has been demonstrated to you.

Rule 3: If you are male, you belong to a clan for life. You cannot choose the clan to which you want to belong. If you are female, you join your husband's clan. Females and males learn very different rules.

Rule 4: When the clan wins, you win. When the clan loses, you lose. If you make a mistake or get into trouble, it ruins the reputation of the entire clan. A mistake is not viewed as an individual problem. A clan has a responsibility to work together to avoid mistakes.

Rule 5: The clan leader is responsible for the whole team; he assumes responsibility for the errors of all members. In return, members feel a strong sense of personal responsibility and loyalty toward the leader. Since no one can change clans, the leader must work very hard to build a first-rate team with the people he has. There is no way to "get rid of" someone who doesn't do their part.

Rule 6: Rank in the clan is determined by seniority. People of the same age are on the same string and they "move up" together. There is much cooperation and team work among brothers and cousins. Within the team, there is little jealousy or competition among individuals. You "get ahead" by working with your peers. If someone gives you a compliment, it is best to turn the compliment so that it benefits the group. You don't want anything to interfere with the solidarity you feel with the members of your clan. If you want to give a compliment, direct it to the clan of the individual. It is the group effort that deserves praise.

Rule 7: The best rewards in life are for earning the respect of the clan and increasing public regard for the clan. Individual success is nice but really doesn't help you unless it helps the clan.

HYPOTHETICAL SITUATIONS

Try to imagine a day in the life of a large, extended Hmong family. This family is dedicated to maintaining the culture and traditions of their ancestors. Decide how each of the situations should be resolved according to the "Rules for Getting Along in Hmong Society." If you think the resolution would be different using U.S. values and traditions, explain that resolution as well.

1. Recently, Song's husband, Kao, has been spending time with a young girl in the neighborhood. Song gets up long before her husband to make his breakfast and then works all day under the direction of her mother-in-law. For several months, she has been very sad and lonely. Song thinks fondly of her life in the town in which she was raised. She would like to be with her family again.

What should Song do?

2. Ly and his family have lived in the United States for two years. Ly's speech teacher has taken a special interest in him. He has offered Ly an A if he will take a part in the school play; to do so, he must attend rehearsals after school. Ly's parents want him to get good grades, but their rules require him to avoid all extracurricular activities at school. They expect him to come directly home after school, keep his friendships within the Hmong community, and spend his free time studying.

What should Ly do?

3. Chu immigrated to the United States three years ago. His son has been hospitalized with a high fever for several days. The doctors cannot isolate the problem. The shaman advises the sacrifice of a pig to bring the problem to the attention of the spirits responsible for healing children.

What should Chu do?

4. A member of the Lee family was caught shoplifting a radio by a Hmong shopowner who is an elder in a U.S. city where they both live. The young man was so frightened when he was caught in the act of taking the radio that he dropped it on the sidewalk and watched it break beyond repair.

What should the shopkeeper do?

5. Bao, a 17-year-old high school student, has been offered a four-year engineering scholarship to an elite school in another state. While her teachers tell her this is the chance of a lifetime, her parents see it differently. Her father has been arranging a marriage with a Hmong man. If she marries, Bao knows her life will revolve around working in her husband's family's produce market.

What should Bao do?

6. Ka has received outstanding marks in her ESL class. She has progressed so quickly that her teacher would like to promote her to a more advanced class. Her husband is an average student in the same class. He has suggested that she drop ESL to spend more time with their children.

What should Ka do?

7. While on their way to math class, Lia's friend admires her new outfit. She is very pleased with the new clothes that she purchased for a family gathering.

How should she respond?

4 HMONG MARRIAGE TRADITIONS AND U.S. LAW

Introduction:

The Hmong people of Southeast Asia are one of the most recent and least understood immigrant groups in the United States and thus an interesting case study for looking at the U.S. legal system through the eyes of new citizens who have experienced legal traditions different from our own.

This lesson asks students to consider traditions and customs of Hmong society in the context of a long, proud history of migration throughout China and Southeast Asia and then to reconsider one of those customs – arranged marriage at an early age – in the context of the U.S. legal system. This unit provides a departure point for discussing whether a new citizen's culture should be a consideration in the judicial decisions.

Objectives: At the end of this lesson, students will be able to:

1. Explain that cultural practices of immigrant groups sometimes conflict with U.S. law.
2. Identify common and conflicting values between the Hmong and U.S. legal cultures.
3. Analyze a juvenile/family legal issue from two cultural perspectives.
4. Develop a legal opinion by utilizing or rejecting culture as a factor in a civil case.

Time: 2-3 class periods

Materials: Copies of Handouts H-4, H-5, and H-6 for all students; three copies of each role card.

Procedure:

1. Discuss U.S. pride in welcoming people seeking freedom. How important is it that immigrants conform to our values and practices? How do we decide which practices should be tolerated in a multicultural society? Which practices contradict our basic ideals and values and should be punished?

2. Explain that students will have an opportunity to explore answers to these questions more formally through a study of Hmong culture. Provide students with Handout H-4. Have students look for information that will help them compare U.S. and Hmong society and complete the worksheet. You may use the following questions to stimulate discussion:

- How have the Hmong preserved their culture and history? (Oral traditions.)
- List three ways the Hmong have resisted domination by other cultures. (Moving to the mountains, fighting back, agrarian lifestyles rather than urban.)
- List three advantages of the extended family system as practiced by the Hmong. (Strong social support among family members; no orphans or widows; creates the necessity to get along well with other people; many people working together for the economic support of the

family; easier to pass on the family, clan, and culture's traditions; few feelings of isolation/anonymity.)

- What are some reasons the Hmong and other agricultural societies marry at young ages? (Harsh life with short lifespans; produce more kids for labor purposes; produce more kids for support of parents in their old age; create strong family ties early in life...)
- What is the role of the shaman in Hmong society? (Advisor, doctor, psychologist, intermediary with the spirits.)
- Who did the Hmong support during the Vietnam conflict? Why? (The United States because the Hmong opposed the same groups as the United States.)
- Why did the Hmong leave Laos after the Vietnam conflict? Where did they go first? (They fled Laos to escape the Communists, who punished the Hmong for helping the United States. They went to Thailand first.)
- Why did the Hmong come to the United States? (Because the U.S. government promised help with resettlement and protection from the Communists.)
- The difficulties the Hmong faced in adapting to U.S. society can be described as "culture shock." Describe one example of culture shock experienced by the Hmong. (Banks, police, salaries, etc.)
- What are some cultural problems the Hmong are experiencing as they adapt to American lifestyles? (Changing sex roles, materialistic children, etc.)

Has this reading caused you to reconsider any of your ideas about what practices are acceptable, or unacceptable in our country or in other societies?

3. Conclude this portion of the lesson by discussing the Hmong practice of arranged marriages. Do students consider the right to pick your mate a human right? Do they think arranging marriages is an acceptable practice for Hmong society? Might Hmong society be threatened if they were denied the opportunity to follow their customs?

4. Introduce the role play by explaining that students are going to investigate issues related to U.S. marriage laws and Hmong cultural practices. What beliefs do we have in the United States about marriage? Discuss the individual's right to choose his/her mate and societal bias that better marriages occur at later ages. Why is our society biased against teen marriage? How are these beliefs translated into law? Discuss parental permission for marriage certificates.

5. Ask: How do you think our marriage practices must appear to the Hmong, given their attitudes toward family? Discuss the high divorce rate and increasing number of single-parent families.

6. Prepare students for the role play by using Handout H-5 to provide an overview of the case. A Hmong family, the Yangs, have requested a special hearing regarding the marriage of their 14-year-old daughter, Sheng. The County Office of Clerk and Recorder has refused to issue a marriage license to Mr. Pao Moua, citing Colorado Statute 14-2-108.

Assign groups of two or three students to each witness role. All other students should prepare for the role of judge by reviewing the steps in the hearing outlined on that role card. Provide 15 to 20 minutes for each group to coach one person to play the role in front of the class.

7. Rearrange the classroom to resemble a courtroom. All judges can be in front of the room, with one judge conducting the hearing as outlined on the judge's role card.

8. Following the mock hearing, have the judges work in groups of three to write their opinions. While the judges are working, the role-playing groups can meet to give their representative feedback and discuss what they think the outcome will be.

9. Each group of judges should report their decision. What arguments convinced them to rule as they did? What do they think a real judge would do? Explain that in one similar case, the judge decided to deny permission for the couple to marry, but the couple decided to marry in a Hmong ceremony without a marriage license. Explain that it is common for Hmong people to marry young and keep the marriage a secret because they know that many Americans look down upon early marriage.

10. Provide all students with the arguments for considering culture as a defense, as outlined on Handout H-6. Discuss the arguments for and against considering culture as a factor in legal decisions. Have students re-evaluate the case and write a position paper explaining the role that culture should play in civil cases.

HMONG CULTURE

As you read the information that follows, list some Hmong practices and traditions described in the first column. In the second column, list some information to show how U.S. traditions and customs are similar to and different from those of the Hmong.

	Hmong	United States
History		
Language		
Family Life		
Roles of Men and Women		
Work/Economy		
Religion		
Government		

Introduction

The Hmong people of Southeast Asia have a long history of statelessness and migration throughout Asia. As with many Native American tribes, they work to maintain their traditions and culture in a technologically advanced world that threatens a way of life that has changed little over thousands of years. Today, as many as 5 million Hmong live in southern China; others live in Laos, Thailand, Burma, and Vietnam. Unfortunately, those who helped the United States in the Vietnam war became refugees. Many died; others are still in refugee camps in Thailand. Over 100,000 Hmong refugees and their descendants now live in the United States.

Since the Hmong did not have a written language until the 1950s, their history is known primarily through folktales and personal stories. There are many mysteries. For example, no one knows for sure where the Hmong people came from – some believe it was Mongolia. For the past 4,000 years they have lived in China and Southeast Asia. Hmong tales tell of ancestors moving from mountain to mountain, defending their culture and independence from powerful invaders.

The Hmong call themselves "the free people," but some of the other culture groups in the region call them Meo or "barbarian." Throughout Asia, they are known as fierce fighters because their history is one of resisting domination. During the 19th century, they left China to escape a harsh ruler. When the French controlled Southeast Asia, they opposed efforts to tax them. When the Japanese invaded their land during World War II, they worked with the Allies as guerrilla fighters.

The Hmong know what it means to be a minority group. Most have chosen a simple life in the mountains rather than submission to the domination of lowland people. As farmers, they have raised chickens, cows, and pigs, cultivated crops, and worried about soil erosion. They had little need for money because they raised most of what they needed and bartered for other goods.

Because of the mountain isolation, many different dialects, customs, and subgroups developed as the Hmong adapted to the various countries and environments in which they have lived.

Role in Vietnam War

The onslaught of war in Southeast Asia changed the Hmong lifestyle in dramatic and irrevocable ways. Farming as it was practiced was no longer possible for many things. As our allies, the Hmong became dependent on food drops as they assisted Americans in a "secret war" to defend their homeland.

Some Hmong were natural allies to the U.S. military in Southeast Asia because they had the same enemy – the Communist forces. The U.S. military recruited and trained Hmong – some as young as 12 years old – to serve as secret guerrillas. They fought fiercely. Some estimate that Hmong suffered 100 casualties for every one American casualty in the war effort in Laos.

The withdrawal of U.S. troops from Vietnam and Cambodia was very hard on the Hmong. The escape from Laos – particularly crossing the Mekong River to reach Thailand – is a source of vivid memories. In the process of fleeing, many became separated from their extended families. The Communists pursued and punished the Hmong for helping the Americans. The U.S. government promised help with resettlement and protection from the Communists. The Hmong people had little choice about their future. They found themselves refugees without a homeland.

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This Hmong storycloth shows the Ban Vanai resettlement camp and scenes of war (Chan 1990).

This storycloth shows U.S. troops leaving Vietnam, the Hmong flight to Thailand, and imigration to the United States (Chan 1990).

Family Life

"To be with family is to be happy. To be without family is to be lost."

Large extended families belong to one of 20 different clans. During this century, the clans scattered throughout the mountains of Laos. Subgroups – Striped Hmong, Flowery Hmong, White Hmong, and the Blue/Green Hmong – are distinguished by their dress and customs.

Elders in the clan are responsible for guiding the social, economic, and religious life of the extended family. Their decisions are communicated to their sons, who in turn explain decisions to their families. Kinship is somewhat intricate but is generally defined by male bloodlines. Families sharing a common male relative, particularly brothers and male cousins who grow up together, live together and support each other. Girls, after marriage, will leave their family and live with the husband's family. Men have a responsibility toward the wife and her kin. For example, if a husband dies, it is expected that one of his younger brothers will marry the widow and care for her. These relationships mean that someone can have hundreds of cousins!

Often, large families live together in one house. Each brother has one room for his wife and children for sleeping. There may be a large room where all members of a family cook and eat.

Hmong men are allowed to have more than one wife. Women are encouraged to marry between the ages of 14 and 18. Virginity is an important quality, and families protect their daughters to ensure a good marriage. If a girl loses her virginity to anyone but her husband, she will not be respected. Parents usually arrange for the marriage of their children, but there are other types of marriage.

Because dating is not allowed, courting usually takes place during the new year celebration, which lasts one to two weeks. This event brings together people from all villages. This is a time for young people to meet. Thus, many marriages result from this celebration.

Hmong Beliefs

The majority of Hmong believe strongly in spirits, or animism, and ancestor worship. Homes have altars opposite the front door for shamanistic religious activities. Ceremonies are tied to nature and agricultural work as well as to the important life events – birth, marriage, and death. A small number of Hmong have converted to Christianity.

Marriage is the subject of much folklore. Today, rituals, *pa ndau* (textile work), and folktales explain the rules for men and women. Wives are expected to raise good children, care for the home, and help their husbands by showing obedience, tolerance, and compassion. Men are expected to be stoic and endure hardship and pain. Sharing and loyalty are important virtues for men.

Burial practices are very important. Hmong believe that it is very important to bury a relative in a beautiful spot. If the dead are not comfortable, the new generations may have bad fortune. Families

conduct elaborate ceremonies making thousands of paper "boats" to be burned and buried with the person. The "boats" represent wealth for the next life.

In times of crisis, shamans intervene with the spirit world. They help the people analyze problems and suggest solutions. Shamans also cure medical problems. Hmong feel that disease occurs when the spirit leaves the body, and that diseases are cured when the spirit has been enticed to return.

These designs show cultural traditions of the Hmong, including a ball-throwing game played at New Year and marriage rites.

Transition to the United States

> On May 15, we lost our homes and our fields. We left behind our cows and our buffalo. Everything we had, we left behind. What we had was good, and we had to leave it all. Now I am afraid that we will leave our history, our customs, and our traditions, they will disappear. We have lost our country, we have lost our fields, and I am afraid that our

> way of life is over. Now we life in America and we don't speak their language. If we hadn't lost our country, we wouldn't have to come here.
>
> Hmong father, interviewed in California in 1985 (Truba, Jacobs, and Kirton, 1990)

As refugees, the Hmong had little choice for a new homeland. Many countries do not accept refugees, and the United States had made promises to the Hmong about a new life in a free country. Many thought the United States was their best chance for reestablishing their way of life. Hmong also wanted a good education for their children and were known to be hard workers.

The first wave of Hmong to arrive were shocked by their first experience with urban life, including banks, police, salaries, and other aspects of technologically advanced society. The adjustment was not an easy one. For example, one family thought you needed to buy something every time you went into a store. For one month, they only looked in the windows. Others suffered from severe stress – feelings of fear, guilt, and sorrow about leaving loved ones and a way of life behind. Men who had been powerful leaders and were skilled as farmers and warriors have the most difficulty adjusting to U.S. culture because of their loss of status and traditional authority roles. For this reason, many Hmong people are on public assistance for many years while they learn skills and make other adjustments to U.S. society.

In contrast to the men, children are quickly learning English. Many women realize that in the United States they have freedoms and rights to express opinions that were not part of Hmong society. These opportunities create tension in many families. Parents are disappointed that their children are becoming materialistic, that they do not observe the traditional religion. Some say they would have preferred putting up with the communists.

While surviving and thriving is difficult for many – particularly males and older people – others are making the adjustment. One young man says, "I don't feel confused about who I am. Being an American is great. I enjoy going to football games, eating hot dogs and cheering the team on. But I am Hmong. I have black hair and speak a certain dialect. But my ideals are American."

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OVERVIEW OF THE MOCK JUVENILE HEARING

This mock hearing is based on an actual hearing that took place in 1990 in Boulder, Colorado. While the events happened much as they are outlined in this mock hearing, it does not represent the goals, experiences, or practices of all Hmong living in the United States. Many Hmong couples have more control over the process than the couple in this case.

A Hmong family, the Vangs, followed traditional cultural practice in arranging for the marriage of their 14-year-old daughter, Sheng, to a graduate student in his mid-twenties. While some Hmong families opt for a common law type of marriage in which they rely on religious and cultural ceremonies but do not seek a marriage license from the state, the families in this case wanted the marriage to be formally recognized by a marriage license from the state of Colorado.

Because the bride was under the age of 16, the County Clerk and Recorder could not issue the license without the approval of the juvenile court. The judge took the question of the appropriateness of the marriage very seriously. He structured the hearing to hear from the Hmong community but also sought information from a Hmong social worker and one of Sheng's teachers.

The Judge:

The juvenile court judge (himself the father of a 14-year-old daughter at Hill Junior High) must determine: Will marriage serve the best interest of Sheng Vang?

Family Members Who Testify:

Vinay Yang, father of the bride

Shoua Vue, one of the negotiators for the Yang family who worked with representatives of the groom's family

Sheng Vang, the bride-to-be and a student at Hill Junior High

Pao Moua, husband-to-be and a graduate student at the University of Iowa

Hmong Social Worker:

Song Goldman, expert witness called by the judge

Public School Teacher:

Tom Hall, teacher of English as a Second Language at Hill Junior High

THE CULTURAL DEFENSE: ARGUMENTS FOR AND AGAINST

Arguments Supporting a Cultural Defense

When an ethnic group's cultural values are ignored by the mainstream society, that group may become alienated from the majority culture. In turn, there may be an increase in hostility and ethnic conflicts.

A judicial system that punishes a person for following his or her culture is making a pretty clear statement that society considers that culture to be inferior.

If a court would judge a person according to the standards of his or her native culture, the court would preserve the values of that culture and thus help to maintain a culturally diverse society – a hallmark of the U.S. system.

U.S. society and our legal system are based on equality. Equality means not only equality of individuals but also equality of ethnic groups. If we are to insure equality, we must respect each group's right to be different. Minority ethnic groups must be treated fairly and equally before the law. They should not be penalized for being different.

The ability to absorb cultural elements from a broad spectrum of ethnic groups is the source of our dynamic and creative society.

Arguments Against a Cultural Defense

The highest aim of a legal system is preserving the social order. Societies must lay down and adhere to a set of laws that requires obedience of all members of society. We should not encourage decisions that weaken the social order.

Every society has standards of conduct to which every member must conform. Our system will fall apart if we start making exceptions for one group and then another. People have chosen to live here and they must abide by the laws or we'll have anarchy.

A fundamental principle of law is that "ignorance is no excuse for breaking a law." This is the standard for an objective, rational legal system.

The administration of law must be uniform. We cannot make exceptions for people because of ethnic practices from abroad. The U.S. justice system should not be influenced by patriarchal values from abroad – values that are often detrimental to women and children. The cultural defense may contribute to unjust behavior and stereotypes.

JUDGE

1. Convene the hearing by saying:

   This hearing arises out of the petition of Pao Moua and Sheng Yang for permission from the court to marry. You are here to request that I, as an officer of the court, approve the issuance of a marriage license and marriage certificate from the state of Colorado.

   Let me begin by reading the Colorado law pertaining to marriage: Revised Statute 14-2-108 states that:

   1) a party under the age of 16 must have consent of both parents and that

   2) the license shall be ordered to be issued only if the court finds that *the underaged party is capable of assuming the responsibilities of marriage and the marriage would serve his/her best interest*. The law states that pregnancy alone does not establish that the best interests of the party would be served.

   To approve this request, I will need information from Miss Yang and her parents. I will also want to hear from Mr. Moua. Since Miss Yang is only 14, the state requires me to make sure that this marriage is in her best interests.

2. Take testimony from the family and other witnesses in the order listed:

   I would like to hear from Mr. Vue first. (Listen to his testimony.)

   I would like to hear from Mr. Yang, Sheng's father. (Listen to his testimony.)

   I would like to hear from Mr. Moua now. (Listen to his testimony.)

3. Call on Sheng Yang. (You will need to interview her using the questions below.)

   I have heard from three people in the court today, but not from Sheng Yang herself. Before I can make a decision regarding the approval of a marriage certificate for a 14-year-old girl, I must hear directly from her.

   - Do you want to marry Mr. Moua?
   - What do you plan to do after your marriage?
   - How do you feel about leaving your family?
   - Are you pregnant?
   - Do you have anything else you would like to say to the court?

4. Seek information about Hmong practices.

   You have provided me with answers to my questions, but I feel as though I need more information to make a fair decision. My knowledge of the Hmong culture is based on what I've heard here today and what I've learned from by 14-year-old daughter, who is a classmate of Sheng's at Hill Junior High.

   I've invited Song Goldman from Social Services to be an expert witness in this case.

5. Invite Song Goldman to provide expertise on Hmong marriage.

6. Explain that you also want information from a representative of Hill Junior High. Invite Tom Hall to describe Sheng's needs from a school perspective. Stop Mr. Hall after he mentions that he has found a letter from Sheng that clearly illustrates the issues he has mentioned. Take the letter from Mr. Hall.

7. Recess the proceedings and request that Mr. Hall, Ms. Goldman, and Sheng meet with you in your chambers. This meeting will take place in front of the entire class, but you will explain the following:

   I decided to hold this meeting in my chambers because it seems to me that this information would be very embarrassing to Sheng and would merely make matters more complex.

8. Read the letter out loud. Ask Sheng if the information in the letter is correct. Dismiss Sheng, Mr. Hall, and Ms. Goldman. Call the courtroom to order and announce that you will recess while you consider your decision.

9. Act as the head of the judicial committee and discuss the issue: Should you allow the couple to get married? Will this marriage best serve the interests of this young girl? When the group has made a decision, call the court to order and announce your decision.

If the decision is to allow the marriage, order the Clerk and Recorder to issue the certificate. If the decision is to disallow the marriage, explain your reasoning to the family.

Following the announcement of the decision, the case is closed.

SHOUA VUE

Tips for Your Role:

You are a highly respected person in the Hmong community. You will speak first at the hearing. The families look to you to help them solve problems and to intervene in American legal issues that they do not understand. You acted as the go-between during the marriage negotiations between the Yang and Moua families. You have much pride and hope to help the Yang family and the Moua family get permission for the marriage.

Follow this script when the judge asks you to testify. The judge may ask you other questions. Answer them as best as possible while staying in your role.

Your Statement:

Judge, I am Mr. Shoua Vue, a shaman and negotiator for the family in the matter of the marriage of Pao and Sheng. Mr. Vinay Yang, Sheng's father, came to me last week and asked my advice on the matter of his daughter's marriage. I have come to court with him because he doesn't know about American laws. He is also concerned that you do not understand our customs. I will try to explain.

The Hmong community is very concerned about our young people who want to become "American" all the way. The elders of the Hmong community here in Colorado are working to keep our Hmong traditions.

You see, Judge, the marriage ceremony, like those performed at birth and death, reaffirms our traditional values. It is through these ceremonies that we emphasize family unity, respect for our elders, female virtues and male duties, loyalty to family, and a cooperative approach to resolving family conflicts.

We value family privacy, but we also want to follow the American way. We ask that you respect Hmong practices. We are disappointed that Americans know so little about the Hmong. We respected your soldiers and helped them during the Vietnam War. Americans should thank us for our help by helping us keep our culture and raise our children as we have for thousands of years.

Sheng is of the age that Hmong people feel is best for marriage. Waiting beyond the age of 18 creates family problems and may lead to divorce. It is better for women to marry at a young age so that family will stay at the center of their lives.

Pao is in graduate school. Although he has done well in the American educational system, he must marry in order to be a full-fledged adult member of the community.

We want the approval of this court. We do not want interference in our private family matters.

VINAY YANG

Tips for Your Role:

As Sheng's father, you show your love by disciplining your daughter. You want her to marry well and not embarrass your family. You are honored that Pao Moua will marry her. The negotiations have all been completed. Your family cannot lose face.

You will speak following Mr. Vue. Read the script below when the judge asks for your testimony.

Your Statement:

Judge, I am Sheng's father. Both my wife and I work long hours for an electronics assembly company here in town. We are trying hard to do the best possible for our family. This marriage has been arranged with the help of Mr. Vue and other negotiators working with the families. We are pleased that Mr. Pao Moua is a member of a clan we respect. He is a very good choice for our daughter – he is 26 years old – a hard-working college graduate. He should not be expected to wait any longer to marry. If this marriage does not take place now, our daughter's life will be incomplete. She will be alone, and our family will lose respect in the Hmong community.

Sheng works hard, but she will not be an adult until she is married. She often has a hard time making up her mind, but she is patient and usually obedient. Because she is beautiful and a hard worker, Mr. Moua has honored us by offering a large amount of money for the "bride price." This shows that he has great respect for Sheng and our family, so we have signed a marriage contract with his family.

Why is American law so difficult? If Sheng is unhappy now, that is common for newlywed girls. She will learn to serve her new family well. She does not understand our traditions very well, but that is one reason that she should get married now, before she forgets how to be Hmong. We worry that she might marry someone who will cause us a bad future.

SHENG YANG

You do not expect to have an opportunity to speak in court, but this may be your last chance to avoid a marriage you are quite uncertain of. The elders will present the case. You also know that if you state your true feelings in public, you may disgrace yourself and your family. You know that the judge may ask questions of you. Use the information below to answer the questions. In general, you are quite confused by the entire proceeding. You are to appear meek and afraid. Answer the judge's questions with simple, one-word answers. Do not volunteer any information that is not asked for during the open court session.

(At some point during the proceedings, the judge will recess the court and call several of you into his chambers for an "off-the-record" conference. During this conference, the judge will reveal that he has a letter you wrote to a classmate. The judge realizes that to discuss the letter in front of your parents would not be a good idea, so he will bring you and a translator, Ms. Goldman, into his chambers to discuss the letter. During this session, you may answer the judge's questions more fully, although you should still appear confused and afraid.)

You would never say anything bad about your family in open court. From school, you know about the trouble that comes when the police get involved in Hmong family affairs.

You respect Hmong customs, even though you do not really understand them. You know that you need the support of the Hmong community to be happy, even though you and your parents do not understand each other very well. You are not particularly happy at home – your father is very strict with you. You were beaten when you were caught wearing make-up to school and again last week when your father heard from a relative that you were at the movies.

You were only 4 years old when your family left Laos. You have been in American school, learning English, since you were 6. You are doing fair in school, but English is still very difficult for you. Your parents are often gone long hours at work or they are too tired to spend much time with you. Your younger brothers and sisters were all born in the United States. Much of your time is spent caring for them. They have grown up speaking English with the neighborhood children. Many times your mother has spoken to you about the duties of a wife, but you find it hard to understand many of the Hmong words she uses, and you often do not understand why your mother and other Hmong women let the men control their lives so much.

Perhaps getting married is the best way to get the freedom that you think you want, but you know that Pao Moua wants and expects a very traditional Hmong wife. While he is industrious and successful, he is also kind of old for you. He has no other wives, yet. The judge might ask if you are pregnant. Answer that you do not know; then, in embarrassment, stand silently and refuse to answer any more questions.

Women in U.S. society seem to have many advantages not available to women in the Hmong culture. You know you are smart. You know how to sew, cook, and care for children, but you are confused and afraid.

It is your goal to take the best of Hmong and American traditions in your life. You are 14 years old. What would be best?

PAO MOUA

Tips for Your Role:

You will let the elders do most of the talking. You want to take advantage of the opportunities in America. Sheng is hard-working and pretty. She will be able to help you get through graduate school. A young bride can be taught to do things the right way. You do not want a wife that thinks of herself as an individual or one who has become too Americanized.

Your Statement:

Judge, we are here because we want the approval of American law. We could choose to marry with only a Hmong ceremony. Because we now live in the United States, we want to honor your law. The marriage agreement pleases all of the parties. After our marriage, we will return to Iowa City, Iowa, where I will be a graduate student.

My fathers, brothers, and I have saved money and given the family a bride price of $3,000. This assures the family that I will take care of Sheng. I value her as an essential member of my family.

SONG GOLDMAN

Tips for Your Role:

You are Hmong by ethnicity but you have been Americanized through your college education as well as marriage to an Anglo man. In your work with resettlement of refugees, you have worked closely with the issue of teen pregnancy among Hmong girls.

Your Statement:

I will try to respond to your request for information about marriage practices in Hmong society. Please remember that since we have moved to the United States, it is very difficult to generalize about Hmong people. We come from different clans, live in different parts of the United States, and have different ideas about how far we should go in adapting to the ways of the United States.

First, let me give you some background on the roles of men and women before we moved to the United States. Roles were very clearly defined. Males were expected to take care of their wives and children. Men were allowed to have more than one wife if they could afford them.

Let me tell you something about traditional marriage customs. There are several types of marriage in Hmong culture. The marriage that the Yang family is telling you about we call "go beg for" marriage. Negotiators for each family arrange the marriage. The husband pays a "bride price" to the wife's family (from $1,000 to $5,000). When the prospective husband comes with an elder to ask for marriage, the bride's family provides certain ritual symbols – including a black umbrella and cigarettes – during the discussion. Traditionally, women are not asked about their feelings during this type of negotiation. This is considered a matter between clans. The family knows best. In many modern families, the bride's consent is an important feature.

Another type of marriage is "marriage by capture." This marriage usually takes place during the New Year celebrations. The man comes to capture the bride following some signals between them. The bride is expected to show modesty by protesting the capture.

I would end by mentioning a type of marriage called "she follows him." This would be called eloping in U.S. culture. Some young people follow this custom because they can save money – they do not have to save for a bride price. This type of marriage may cause embarrassment to parents. Once a young couple has run off together, the parents are helpless to act.

I know Sheng but cannot tell you Sheng's feelings. I'm not sure how Americanized she is. Personally, I think that young women such as Sheng must consider how to best fill their potential in U.S. society. We no longer live in Laos, we live in the United States. Sheng does not speak English or Hmong very well. Her parents have had trouble explaining marriage customs to her.

I would end by mentioning that the Hmong do not feel comfortable with the U.S. legal system. Our language has no word for lawyer, judge, or prosecute. We find the U.S. legal system complicated and technical. It does not support our families. If you do not award the family the request, they will be angry at you and likely mistrust the system even more than they already do.

The judge will call you into chambers to discuss Sheng's situation. At that time, you can add more information about Hmong customs.

There is great pressure in Hmong society to marry within the same culture. Hmong parents are very strict and allow their children little freedom of choice in most matters. Married women, as true adults, have enough freedom of action that marriage has some real attractions for Hmong girls. Premarital sexual freedom is more common in Laos than in the United States, as many Hmong have become Christians. Since fertility is a critical requirement for a successful Hmong marriage, pregnant brides were not uncommon. The closeness of the Hmong extended family has many attractions for Hmong girls who seek status within the traditional roles. In the United States, however, it is time to change these patterns of culture. Hmong men no longer have the right to treat women as items to be bought and carried away simply on the basis of their labor value and their ability to produce children.

You can also attempt to answer any other questions the judge might have to clarify Sheng's position.

TOM HALL

Tips for Your Role:

Sheng is a student in your ESL class at Hill Junior High. She is a hardworking student, but she has trouble learning English. You feel that it would be a mistake for her to marry at this age. You believe that it is in her best interest to stay in school and complete her education. In the past, Hmong girls who married while in junior high have given up on their studies. Many have babies and work at low-level jobs. You do not want to see this happen to Sheng or any other young woman.

Your Statement:

Sheng is a very hardworking student. She will be giving away many opportunities to learn critical job skills and the chance for a high school diploma if she leaves school to be a wife and mother. Even if she stays in school, it will not be possible for her to devote enough time to her studies. She will be expected to put her family first. I am concerned because she is so young and seems to be so overwhelmed by the entire affair. I have talked to several of Sheng's Hmong friends to try and better understand her feelings about the marriage. While Hmong custom often requires that girls protest impending marriage, I feel that Sheng is caught in a trap because her poor language skills in Hmong, as well as in English, prevent her from adequately expressing her feelings. It is clear to me that she is already having trouble at home because of her attempts to Americanize. I suspect that Sheng does not really understand traditional Hmong marriage customs because I have overheard her arguing with friends in mixed Hmong and English about the duties and responsibilities of Hmong wives.

The Hmong practice of early marriage should not be encouraged in the U.S. courts. In my opinion, this practice is so oppressive to women that it should not be practiced by the Hmong anymore. Practices that made sense in Southeast Asia are not practical or humane in the United States.

Sheng deserves to have the same opportunities as her classmates. Women in the United States have made great steps in securing equality with men. Early marriage denies them hope for the future. Hmong cultural practice means that Sheng will be punished if she objects to her family's wishes. She will be treated poorly, perhaps even beaten if she speaks in opposition to her father. She is not free to speak in court. The court should protect her since she cannot protect herself. With those problems in mind, I have a letter written by Sheng to one of her friends that I would like the judge to read in private. I believe that the letter clearly illustrates some of the problems of this case.

(Go up to the judge and give him the letter from Sheng.)

LETTER FROM SHENG YANG TO HER FRIEND BAO XIONG

Dear Bao,

What you think I do? That old man Pao Moua want marry me and my father already get much money for me. $3000. He want me marry very much. Then he no more hit me when see movie. When Pao visit last month he try talk to me and he say I very pretty and he touch me. I like take care small kids very much. Pao say he have big TV in Iowa. Pretty soon I get job at shopping mall so can buy Espirit shirt, if I married maybe I work in Iowa. I be very sad if can not see you. You come to my house today after school? I not sure what to do, so I write a letter to my aunt in California. I want the letter to be correct English, so please read the letter and help me fix it. Write me back in math class OK.

Sheng

Dear Aunt Nhia,

How are you? I am fine. I think I am getting married pretty soon. My father and shaman Mr. Vue find a good man for me in Iowa. Mr. Pao Moua visit us last month and he spend lot of time talking to Mr. Vue and father. Father say he give $3000 for marry me. Mr. Moua is graduate students, 26 years old. Mr. Moua talk to me some. He nice and have big TV in Iowa where he go to college. He like many children. I like children and like to see new place in America. Maybe when married I have lots of time to shop in stores. But I no have time to go school and study. My mother say that girl must get married first, then she learn about love for husband. I like Mr. Moua little bit but he kind of old. I never have boy friend before and I am excited when I think about get married. If I married though, I leave all my friends in Boulder and take care Mr. Moua. My mother work all time and not talk to me much. I not sure what I sposed to do when get married. What do you think I should do Aunt Nhia? Write me soon so I know what to do.

Love,

Sheng

Law and Cultures

MEXICO

The unit-opening essay by Marco Antonio Abarca, an attorney practicing in the Los Angeles area, provides an overview of Mexico's legal history. Considerable information on political history, which is intertwined with legal history and little known by people in the United States, is also presented.

Following the essay are six lessons. Through an examination of symbols significant in the United States and Mexico, Lesson 1 stimulates students to think about similarities and differences between the two nations. Lesson 2 looks at historical influences on law in Mexico, while Lesson 3 focuses on the differences between written and unwritten law, paying particular attention to methods of resolving conflicts that occur outside the formal legal system.

The final three lessons treat legal issues involving immigration. Lesson 4 looks at U.S. immigration law and how it is viewed from both sides of the border. Lesson 5 builds upon this notion, using literary material. Lesson 6 is a case study of a long-standing legal conflict over land grants in territory that was ceded by Mexico in the 19th century.

A SHORT OUTLINE OF THE LEGAL HISTORY OF MEXICO

by

Marco Antonio Abarca

Indian Civilizations

Archaeologists place the beginning of civilization in Mexico at approximately 2,500 B.C., when the first nomadic Indian groups abandoned the life of hunter-gatherers and became farmers. These early farmers experimented with wild plants and domesticated such staples as corn, avocados, tomatoes, chile, papaya, vanilla, and cacao. These crops provided a steady food source, allowing these early farmers to begin the slow evolutionary movement towards civilization and the rule of law. The journey from simple farmers to advanced civilizations was a voyage that took many centuries to complete.

Before the arrival of the Spanish, many advanced cultures rose, matured, and died, to be reborn later in the civilizations that followed. Among the many advanced civilizations of Mesoamerica were such groups as the Olmecs, Zapotecs, Mixtecs, Toltecs, Mayas, and Aztecs. All these civilizations eventually fell into decline, but their languages, customs, religions, and laws still survive in one form or another in modern Mexico.

In Mexico, there are currently between eight and ten million Indians divided among 56 ethnic groups and speaking more than 100 different languages and dialects. Some Indian groups, like the Nahuas, Mayas, Zapotecs, and Mixtecs, number in the hundreds of thousands and dominate the population of entire regions of Mexico. To understand Mexico, one must comprehend the deep Indian consciousness that informs the country. The Mexican philosopher Jose Vasconcellos described this reality best when he wrote that although the civilization and language of Mexico are Spanish, Mexicans are nevertheless Indians in body and soul.[1]

The last major Indian civilization to arise in Mexico was that of the Aztecs. The Aztecs left the deserts of northern Mexico and moved into the Valley of Mexico sometime during the mid-13th century. Starting out as a small tribe competing for local dominance with other tribes already living in the area, by 1440 A.D., the Aztecs controlled the Valley of Mexico and began to spread their influence throughout Mexico. Through warfare and conquest, the Aztecs energetically pushed their empire into central and southern Mexico. At the height of their empire, they controlled 38 tributory provinces. Each defeated tribe or area was permitted to retain its own local government, laws, language, and religion but had to recognize Aztec sovereignty, worship Aztec gods, and pay tribute in goods and slaves.[2]

The Spanish conquistador, Hernan Cortes, arrived off the Atlantic coast of Mexico on Good Friday, April 22, 1519. Within two years, Cortes' small expeditionary force conquered an empire of millions. Having defeated the Aztecs, Cortes' lieutenants moved south and north to finish off the last of the independent Indian kingdoms. By 1542, the Spanish had conquered most of what is today modern Mexico. In 23 short years, the Spanish brought 4,000 years of Indian civilization to an abrupt end.

Colonial Mexico

The Spanish who conquered Mexico were also heirs to an ancient civilization. Spain traced its roots to Imperial Rome, but the culture and world view of the conquistadors was forged in the bloody 700-year struggle to reclaim Christian Spain from the Moslems. Spain successfully expelled the last Moslems from the Iberian Peninsula only 30 years before the conquest of Mexico. The nation that sent a generation of conquistadors to conquer the New World possessed a dynamic culture imbued with great military prowess and deep faith in the Catholic religion.

After the defeat of the Aztecs, Spain found itself in possession of an empire that stretched from the fertile plains of central Mexico to the jungles of Central America. This new empire had millions of Indian subjects living in thousands of small towns and cities. Having created this new empire, Cortes now had the difficult task of imposing Spanish rule on a vast realm with only a few thousand armed followers. Cortes accomplished this task by using many of the techniques the Aztec elite had used to rule their empire. Cortes allowed many of the tribes to maintain a high degree of local autonomy, but he forced the Indian tribes to recognize Spanish sovereignty, worship the Spanish God, and pay the Spanish conquerors tribute in goods and labor.

The legal principle Cortes used to extend the authority of Spain was the *Encomienda* (en-coh-myén-dah) system. Theoretically, the purpose of the *Encomienda* system was to Hispanicize the Indians of Mexico. The system worked through the official assignment of large groups of Indians to privileged Spanish colonists. As recipients of these grants, the Spanish colonists were entitled to receive tribute and labor from the Indians delegated to them. Although obligated to provide tribute and labor, the Indians were not considered to be slaves. A social contract underlay the *Encomienda* system. In return for receiving Indian labor and tribute, the Spanish colonists were obligated to watch out for the Christian welfare of the Indians assigned to them.[3]

The reality of the *Encomienda* system was very different from the theory on which the system was based. The Spanish colonists had little interest in watching out for the Christian welfare of their Indian wards. The colonists viewed Indians as a resource to be exploited. The rapacious cruelty with which the Spanish exploited Indian labor, combined with the new European diseases, caused a catastrophic decline in the Indian population of Mexico during the 16th century. It is estimated that the Spanish colonists – through massacres, uncontrolled exploitation, and European diseases – wiped out three-fourths of Mexico's Indian population within 40 years of their conquest of Mexico. In 1519, an estimated 25 million Indians lived in Central Mexico alone. By 1548, only six and a half million Indians were left in Central Mexico.[4]

At the same time the Spanish were engaged in wiping out Mexico's Indians, they were also busy creating a new *mestizo* (may-stée-so) group. This new group formed from the union of the Spanish conquistador father and the Indian mother was a race born of the brutal conquest of Mexico. Today, most of Mexico's people identify themselves as *mestizos*.

One of the results of the creation of a new *mestizo* group was increased social and racial stratification in Mexico. In the first years after the conquest, the social dynamic had been Spanish conquistadors versus Indians. As time went by, however, colonial society became more diverse. At the top of the social pyramid were the *peninsulares* (pay-néen-su-láh-res) – Spaniards born and raised in Spain. Below them were the *criollos* – Spaniards who were born and raised in Mexico. The *peninsulares* looked down on the *criollos* (cree-óh-yos), who in turn resented the arrogance of the *peninsulares*. Next came the *mestizos*, who were neither quite Spanish nor Indian. In colonial society, the *mestizos* served as the intermediaries between the Spaniards and the Indians. The next group down on the pyramid were the Indians, the conquered majority of the country. The Indians were relegated to the margins of colonial society. However, one step below the Indians and at the very bottom of the social structure were the African slaves who had been brought to Mexico.

Colonial Mexico was a very race- and class-conscious society. In turn, the Spanish developed a whole body of complex laws to codify and regulate the relationships between the different groups and the rest of society. While most Mexicans now identify themselves as *mestizos*, a high degree of race-consciousness still survives in Mexico. Light-skinned Mexicans of European origin still dominate many aspects of Mexican society. *Mestizos* are somewhere in the middle, while Indians and Blacks are still at the very bottom of Mexican society. This is one of the legacies of Spain that Mexico still lives with.

By the end of the 16th century, the Spanish emperor moved to curb many of the worst abuses committed by the first generation of Spanish colonists. He accomplished this by imposing more political and legal control from Spain. This control was manifested through the creation and strengthening of a governing body known as the Council of the Indies. The Council of the Indies was made up of lawyers, priests, bureaucrats, and other high officials who had returned to Spain after service in the colonies. They drafted royal laws, ordinances, and decrees and had the power of judicial review over local legislation enacted in the colonies.[5] Almost every aspect of colonial life was centrally regulated from Spain. Laws determined where communities could be established, how streets and buildings could be arranged, who would govern the communities, and how land should be allocated. Almost no aspect of colonial life was too small or insignificant to escape the notice of the Council of the Indies.

One aspect of the increased supervision of Mexico by the Council of the Indies was that new laws were promulgated to protect Indians from exploitation by Spanish colonists. The *Encomienda* system was slowly abolished, and a new system of governing Indian communities was established. Under the new *Corregimiento* (coh-rray-hee-myén-toh) scheme, Indian communities were allowed to own and control their own communal lands. Spaniards were not permitted to own land in Indian communities. The administrative link between Indian communities and the Spanish Empire was through Spanish bureaucrats known as *corregidores* (coh-rray-hee-dóh-res). The *corregidores* were the local administrators who brought Spanish law and control down to the community level.

Many laws were passed to keep *corregidores* from exploiting the communities they were in charge of administrating. Although the *Corregimiento* system was an improvement over the *Encomienda* system, many *corregidores* were corrupt and continued exploiting Indian communities. The laws protecting Indian communities were difficult to enforce in the farthest reaches of the Spanish Empire. From the very beginning, the relationship between the Mexican masses and the official government was tainted by official corruption and a deep mistrust of governmental officials on the part of the people. This is yet another of the Spanish legacies that still survives in modern Mexico.

The most important legacy of the *Corregimiento* system was that Indian communities were allowed to own and control their own communal lands. The Spanish administrators consolidated Indian hamlets into towns and established "Republicas de Indios." As long as they tilled their lands, the land belonged to the Indian community. Communal lands could not be sold to non-Indians who did not belong to the community. Spaniards were ordered to stay out of Indian Communities. The Spanish had to settle in their own towns.[6]

However, the reality was very different. In a pre-industrial society, land was the principal source of wealth and the Spanish colonists used many legal devices to seize Indian lands. The royal courts were created by the Spanish Emperor and it was a forum that the Spanish colonists could easily dominate. Spanish colonists used three legal strategies to take Indian lands. The first was *congregacion*, a policy that forced Indians to leave their rural homes and move into villages. Once the Indians were no longer living on their individual lands, it was much easier for Spaniards to make legal claims on the land. The second device was known as the *denuncia*. If there was a dispute over land, a Spaniard could force an Indian community into showing that they had legal title to the lands in conflict. It was often a very difficult task for poor Indians to show that official title to their land. The last technique was known as *composicion*. Under this technique, land could be claimed through land surveys. This was another legal device Indian communities were not prepared to deal with. The Indian communities did not have the same access to land surveyors as the Spanish colonists.[7] Slowly, over many generations, Spanish

landlords pushed Indian communities out of the best lands and into the mountains and deserts. The best lands were formed into huge ranches known as *haciendas*.

These changes in the legal system permited an Indian community to retain some degree of local autonomy. On one level, the community had official dealings with the Spanish Empire and these matters were handled through the *corregidores*. Bringing legal problems before *corregidores* was expensive, time-consuming, and alien to most Indians. It was easier and more efficient for Indian communities to take care of their own internal legal problems.

Most Indian communities established a system of local rule known as the *cargo* system. Under this system, the men of the Indian community gathered each year and appointed members of their community to village political offices. Young men started out as village policemen and messengers; as they became older and accumulated more experience and prestige, they were appointed to higher offices such as village secretary, treasurer, and mayor. Thus, when there were legal problems inside the community, villagers could turn to locally appointed officials to resolve their disputes. The cargo system was successful because it was built on to an older system of internal self-rule that predated the arrival of the Spanish. This system of internal self-rule was so successful that it is still alive in many Mexican Indian communities.

The *cargo* system is an excellent example of how law has worked in Mexico since the colonial era. As in any other society, there has always been a need for a semblance of law and order. When the formal legal system does not work due to corruption or inaccessibility, an informal legal system arises to take its place. Communities all over Mexico have certain norms that a community member must live by. When a person transgresses community norms, the community moves against the person and attempts to reestablish its control. Community action against a wrongdoer can range from gossip, witchcraft, and shunning to more severe actions like banishment and even assassination.

At the same time that the Spanish Empire was consolidating its political hold on Mexico, the Catholic Church was busy establishing its religious hegemony over the country. The first step the Church took was to destroy the most prominent symbols of Mexico's Indian religions by tearing down pyramids and religious shrines. On their foundations, the Spanish priests erected Catholic churches and other symbols of their religion. The Spanish also wiped out the Indian religious elite and began the mass conversion of Indians to Christianity.

The Spanish were very successful in introducing their new religion, but the folk Catholicism that developed in Mexico was very different from the Catholicism that was practiced in Spain. The Indian masses adopted the outward manifestations of the religion of their conquerors and combined them with their own pre-Hispanic beliefs. On the surface, Mexican folk Catholicism with its churches and saints appeared to be Roman Catholic, but below the surface, many of the beliefs remained profoundly Indian.

In the 17th and 18th centuries, Mexico began to recover from the tremendous destruction that was wrought during the 16th century. Local industries developed in the Valley of Mexico, and wheat cultivation and cattle operations were established in the fertile farmlands of central Mexico. Soon, rich silver mines were discovered in the desolate and hostile reaches of northern Mexico. With the discovery of these rich mineral deposits, Spain begin to explore and colonize the northern borders of its Mexican territory. The northernmost of these Spanish settlements were located in what are today the U.S. states of California, Arizona, New Mexico, and Texas.

Ironically, as Mexico recovered from the devastation of the first century of conquest, the Spanish Empire began to conversely fall into a state of decay. Although local conditions improved, the Spanish Empire was not able to keep up with the new Empires being established by the English, French, and Dutch.

The Spanish ruled their Empire with the understanding that their colonies existed solely to enrich Spain. They had little interest in the internal economic and political development of their colonies. By the beginning of the 19th century, many of the Spanish *Criollos* who had settled and resided in Mexico for generations began to deeply resent the excessive control exerted by the Spanish king. The *Criollos* wanted to have more input into the governing of Mexico.

The more progressive elements of Mexican society looked north and saw the example of how the American colonists had fought a war and thrown off the burden of English rule. They believed the same thing could happen in Mexico. These would-be revolutionaries were also deeply inspired by the liberal philosophies that were being championed during the French Revolution. They observed the lethargic decay the Spanish Empire had fallen into, and they knew it was just a matter of time before Mexico declared its independence from Spain.

Independence

The French emperor, Napoleon, presented Mexico with its opportunity to declare its independence from Spain. In 1808, Napoleon imprisoned the Spanish king and forced him to abdicate. The Spanish king was replaced by Napoleon's brother. This action threw the Spanish Empire into political chaos. The colonists in Latin America refused to acknowledge Napoleon's brother as their king. The question became who ruled the Empire if a French usurper was on the Spanish throne. A number of juntas formed in Spain and Latin America, each proclaiming that they ruled the empire in the name of the imprisoned Spanish king. While political uncertainty reigned in the colonies, the Spanish administrators left by the dethroned king continued to rule the Spanish colonies.

In 1810, a *criollo* priest named Miguel Hidalgo took advantage of this uncertainty and declared a War of Independence. He hoped that Mexico's *criollos* would join him in his struggle to declare an independent nation. He wanted to end Spanish rule and replace it with *criollo* rule. However, the revolutionary movement soon grew beyond the control of Father Hidalgo. The idea of a revolution was very popular with the long oppressed Indians and *mestizos*. The revolution soon took on the connotations of a class and race war. As Hidalgo's army of poor Indians and *mestizos* moved towards Mexico City, the peasant soldiers did not make many distinctions between Spaniards born in Spain and Spaniards born in Mexico. They indiscriminately killed Spaniards and destroyed their property. Many of the *criollos* whom Hidalgo had initially hoped to recruit to his cause aligned themselves with the *peninsulare* Spaniards and the other main bastion of conservative thought, the Catholic Church. They pooled their resources and moved to destroy the rebellious Indians and *mestizos*. By the summer of 1811, the Spanish Army reversed Hidalgo's initial successes and destroyed his rebel army. Soon after, Father Hidalgo was captured and executed.

The execution of Father Hidalgo did not end the War of Independence. Others picked up the cause of independence, and the war continued. For 11 years, a vicious war raged throughout Mexico. Spanish and rebel armies moved up and down the country, massacring civilians, devastating property, and destroying the country's infrastructure. By the time the War of Independence came to an end, an estimated 600,000 lives had been lost.[8]

The political situation in Spain changed dramatically in 1820. The Spanish king was put back on his throne but was forced by his generals to accept a liberal constitution. The new liberal constitution promised to radically change the way Mexico was governed. The conservative *criollos* and *peninsulares* of Mexico feared the social reforms this new constitution would force upon the country. In an effort to preserve the status quo, Mexico's conservatives joined forces with the rebels and declared for independence. The conservatives hoped to control and coopt the independence movement. Now seeing that both the liberal and conservative factions of Mexico were united behind the independence movement, Spain had no choice but to grant Mexico its independence in 1821.

Having thrown off the weight of 300 years of Spanish rule, the people of Mexico now had the difficult task of trying to create a new nation. However, the seeds of future political chaos were sown in the independence agreement between the liberals and conservatives. The Republic of Mexico came into being with two strong political factions who held very different visions for the future of Mexico.

The liberal faction was comprised of *mestizos*, the urban middle class, intellectuals, professionals, and small ranch owners from the north of the country. Inspired by the writings of Rousseau and Jefferson, they were supporters of social revolution in Mexico. They wanted to end the social privileges of the military and the Catholic clergy, to confiscate church properties, and to end the caste system that kept *mestizos* from advancing in society. They wanted Mexico to turn away from its Indian and Spanish past and look north to the United States as a model for what Mexico could become.

The heart of the conservative movement was in the center of the new Republic, where Spanish rule had been most firmly established. The base of support for the conservative forces came from the military, the wealthy *criollos*, and the Catholic Church. Conservatives had been at the top of Mexican society before the War of Independence, and they wished to retain their power. They had little interest in dismantling a system that had served them so well for 300 years.[9] Their vision for the new nation consisted of a strong military that ruled the country through a dictatorship.

The Indian majority remained indifferent to this struggle between Mexican elites. They identified more with their villages and ethnic groups than they did with the new Mexican Republic. Their role in this struggle between liberals and conservatives was as pawns to be mobilized by one army or the other. Ironically, the greatest losers from the War of Independence were Mexico's Indian masses. At least under Spanish rule, paternalistic laws protected Indian lands and allowed them a certain amount of local autonomy. Without the Spanish king and his laws, there was nobody to protect the Indians from the local elites who craved their land and labor.

For the next half-century, Mexico was plunged into political chaos. Eleven years of war had destroyed most of Mexico's infrastructure. The War of Independence forced the country's mineral production, industry, and agriculture into rapid decline. The decline accelerated as liberals and conservatives waged war against each other. If this were not enough, Mexico had to deal with invasions by the French and the Spanish, political intrigue initiated by the English and Americans, as well as a major Mayan rebellion in the Yucatan Peninsula. During these years of decline, there was very little formal law in Mexico. The military strongmen who dominated the different regions of Mexico imposed their own law on the areas they controlled.

Before this political chaos, Mexico was the dominant political and economic force on the North American continent. The decades of constant warfare and economic decline forced Mexico from a position of dominance and allowed the country to be eclipsed by the United States.

Conflict with the United States

While all these disasters were taking place, Mexico also had to worry about a dynamic United States that was rapidly expanding from its eastern seaboard and briskly advancing towards Mexico's northern territories. Mexico realized that the only way it could expect to hold onto its northern territories was by rapidly increasing the Mexican population in these areas. As part of this plan, Mexico made the mistake of inviting American settlers to move into Texas. In return for land, the new settlers agreed to convert to Catholicism, learn Spanish, become citizens, and respect Mexican law. By 1835, the American settlers resented the fact that under Mexican laws they could not own slaves and had to pay increased taxes to the central government. After a bloody war, the Americans won their independence and proclaimed the establishment of the Republic of Texas. In 1845, the U.S. Congress admitted Texas to the Union.

Many Americans believed that it was the manifest destiny of the United States to create a nation that stretched from the Atlantic to the Pacific Ocean. Only the lightly populated northern Mexican states stood in the way of fulfilling this dream. A border skirmish in 1846 gave the United States the excuse it needed to invade the weakened Mexican Republic. Soon, American troops were streaming into Mexican territories. Within the year, an American Army occupied Mexico City and raised the U.S. flag over the National Palace.

American diplomats imposed on Mexico one of the harshest treaties of modern times. The Treaty of Guadalupe-Hidalgo forced Mexico to cede half of its national territory. In return for 15 million dollars, Mexico was obligated to turn over 890,000 square miles to the United States. The United States obtained what is today New Mexico, Arizona, Nevada, Utah, Southern Colorado, and California.

The Mexican citizens living in these captured territories were given the option of becoming American citizens. Those who wished to retain their Mexican citizenship had to let their intentions be known within the year. As U.S. citizens, they were given the full rights, liberties, and protections guaranteed to all other U.S. citizens. In addition, their property rights were to be recognized and respected. The reality was very different from the ideals expressed in treaty.

The Mexican people in these newly conquered areas were never treated as full U.S. citizens. They were viewed more as a conquered foreign race. Before the arrival of the Americans, the Mexican population owned the best lands and retained a high degree of local political autonomy. Within 50 years, they lost control of their local governments and the vast majority of their land. They soon became strangers in their own land.

The Mexican-American War is the single event that has most informed the relationship between Mexico and the United States. Perhaps its greatest legacy was the confusion and suspicion it created between the two countries. The journalist Alan Riding observed, "Probably nowhere in the world do two countries as different as Mexico and the United States live side by side...Probably nowhere in the world do two neighbors understand each other so little. More than by levels of development, the two countries are separated by language, religion, race, philosophy, and history."[8]

The experience of losing half of its national territory left Mexico forever changed. Although more than 140 years have passed since the end of the War, Mexico still retains a great deal of bitterness and suspicion towards the United States. The fear of being victimized once again by the United States is a concern deeply embedded in the Mexican psyche. The Mexican view of its relationship with the United States is best summed up by the maxim attributed to the Mexican Dictator Porfirio Diaz. He remarked, "Poor Mexico. So far from God, yet so close to the United States."

The Mexican-American War had a very different impact on the United States. After the war, the United States was left with the knowledge that it owned and controlled all the territory from the Atlantic Seaboard to the Pacific Coast and that no power could further challenge its domination of the North American continent. The United States was never to see Mexico as an equal member in the family of nations. The relationship would always be colored with the knowledge that United States had beaten Mexico in a war. While the United States may not be the menacing bully that Mexico has always believed it to be, the United States has at times been guilty of insensitivity and indifference to Mexican concerns.

La Reforma

The loss of the war to the United States left Mexico a demoralized nation. If the country hoped to remain intact, serious changes would have to be made. By 1855, the liberals were once again in power. The next decade would witness a dynamic social revolution in Mexico known as *La Reforma*. Led by *mestizo* liberals, the reform movement would attempt to establish a constitutional government, abolish

the independent powers of the clergy and the generals, and attempt to stimulate the economy by seizing and selling Church properties. While not fully successful in its attempt to destroy the feudal system that gripped Mexico, the reform movement did see the partial transfer of power from the *criollo* elites to a new mestizo leadership.[11]

The new Liberal government used the law as its principal tool to weaken the conservative *criollo* elites. The first two series of reform laws were named after the liberal leaders Benito Juarez (Be-née-toh Huáh-res) and Miguel Lerdo Tajeda. The "Ley Juarez" (Lay Huáh-res) abolished the right of priests and soldiers to be tried in their own courts of law. Under the new law, when priests or soldiers committed crimes or violated the civil law, they were tried in the same courts as other Mexican citizens.[12]

The "Ley Lerdo" (Lay Láir-doh) was enacted to prohibit the Catholic Church and villages from owning landed estates. The purpose of the new law was to strip the Catholic Church of its property, increase government revenues through taxes on the sale of properties, and, it was hoped, create a nation of small property owners. The new law allowed the Church and villages to retain only the land and buildings necessary for their continued maintenance. All surplus property had to be sold. Once the property was auctioned off, proceeds of the sale would be turned over to the Church or the villages, and a sales tax would be collected by the government.

Instead of creating a nation of small landowners, the "Ley Lerdo" had the opposite effect. The only people with the necessary money to purchase the new properties were wealthy Mexicans and foreign capitalists. The new law encouraged the creation of huge ranches known as *haciendas* (ah-see-yén-dahs). The second result of the "Ley Lerdo" was to strip Indian villages of their communal properties. Under Spanish colonial law, Indian lands belonged to the village and could never be sold or transferred. Under the new "reform" law, the village had to sell the communal lands; the only people with the money to purchase the land were non-Indians. The impact of the new law was to transform Mexico's Indian population from independent peasant farmers to peons working on large estates.

The new reform laws struck at the very heart of conservative privileges. The conservatives soon initiated a revolt against the liberal government. The Catholic Church used its great wealth to bankroll the rebellion. As a response, the liberal leader Benito Juarez passed new reform laws that declared all remaining Church property and assets were to be nationalized without compensation and that every male religious order and brotherhood was to be abolished. Furthermore, marriage was made a civil contract, cemeteries were removed from the control of the Church, many religious holidays were abolished, and the freedom of worship was established. Thus, the separation between Church and State in Mexico was created during the middle of a violent civil war.[13]

The conservative forces were defeated after a bloody three-year civil war. The conservative military defeat did not bring peace to Mexico. The conservatives, not ready to give up the fight, went to Europe and asked the Pope and conservative Catholic monarchies for support. In 1861, under the pretext of securing payments on pending debts, Britain, Spain, and France landed military forces on the Atlantic coast of Mexico. Within three months, the British and Spanish left Mexico. The French Emperor, Napoleon III, had dreams of creating a new Empire in the Americas. The French Army marched into Mexico City and forced Benito Juarez's government to flee the capital. In 1863, Napoleon III installed the Austrian Archduke Maximilian as Emperor of Mexico. He stationed 30,000 French soldiers to help the new Emperor hold on to power.

With military aid from the United States, Benito Juarez and his liberal forces waged war against the combined French and conservative armies. In 1867, Napoleon III withdrew his troops from Mexico. Soon the remaining conservative armies were defeated, and Maximilian was executed. For the first time in more than 50 years, an exhausted Mexico found itself at peace. Benito Juarez discharged his troops and began the slow process of rebuilding Mexico.

Porfirio Diaz

The next significant period in Mexican history began with the presidential election of Liberal general, Porfirio Diaz (Por-feér-yo Dée-ahs) in 1876. Diaz was to remain president and dictator of Mexico until 1910. His 35 years of iron-fisted rule brought Mexico the first extended period of stability since the end of Spanish colonial rule.

On one level, Porfirio Diaz's dictatorship was a stunning success. Having imposed political peace on the country, Diaz took economic and legal steps to create a favorable environment for foreign business investment. European and American investment capital soon poured into Mexico. As a result of these policies, industrial development rapidly increased during his reign. The mining industry recovered from the precipitous decline that had begun during the War of Independence. Railways increased from 287 miles to over 12,000 miles. Thousands of modern factories were opened and infrastructure to support them was also developed. When Diaz came to power, Mexico was a bankrupt nation exhausted from 50 years of almost continual warfare. By 1910, Mexico had a large budget surplus and had increased its commercial exports fivefold. Diaz had paid off Mexico's foreign debt, created a modern banking system, simplified and modernized tax collection, and created a sound international credit reputation.[14]

The guiding legal philosophy that allowed this rapid development to take place can best be understood by the phrase *pan o palo* (pahn-oh-páh-loh), bread or the club. After 50 years of nearly constant civil war, Mexico had a large number of dangerous and competing regional leaders and groups who were ready at a moment's notice to return the nation to civil war. Diaz offered these dangerous segments of Mexican society money, land, and prestige if they were willing to cooperate with his regime. Those leaders and groups who were not prepared to be bought off were ruthlessly crushed. This was Porfirio Diaz's highly successful recipe for ending civil war.

While Diaz's policies were very effective in ending civil war, they also sowed the seeds of an even greater social revolution. To buy off all of his potential enemies and to reward his friends, Diaz took the land and labor of Mexico's rural Indian and *mestizo* population and distributed them to his cronies. When peasants protested the loss of their land, Diaz used the "club" and sent in armed troops to restore the peace. By 1910, 800 wealthy families owned 90 percent of the rural land. The 1910 census revealed that Mexico's total population of 15,160,000 included 834 *hacendados* (ah-sen-dáh-thos) and between 9 and 10 million landless peasants.[15] This radical redistribution of land and resources created a social powder keg that was waiting for an opportunity to explode.

In 1910, the 80-year-old Porfirio Diaz decided to run for his sixth term as president of Mexico. Instead of running against one of the usual pro-forma opposition candidates, Diaz had to face the candidacy of a wealthy rancher named Francisco I. Madero (Frahn-sées-co Mah-dáy-ro). Madero campaigned throughout Mexico, gaining a great deal of popular support. Sensing that Madero posed a serious threat to his regime, Diaz had Madero and 5,000 of his supporters thrown into jail. As was custom, Diaz won the 1910 presidential election by a huge electoral landslide. Madero did not accept the defeat and fled to the United States, where he called for a national uprising to overthrow Diaz.

The initial stages of the rebellion were a complete failure, but soon the idea of an armed uprising against Diaz took hold in the north of the country. By the spring of 1911, small rebellions erupted all over Mexico. The Mexican masses that had been so severely oppressed for hundreds of years began to once again stir. It soon became apparent that the federal army was unable to stem the rising tide of rebellion. Within a few months, the man who had so fiercely dominated Mexico for 35 years was unable to hold onto his power. In May of 1911, Diaz resigned as president of Mexico and went into exile in France.

Mexico in the 20th Century

Having been awakened, the Mexican people were not prepared to go back to sleep. The first of the 20th century's great social revolutions was about to begin. Large revolutionary armies made up of *mestizo* ranchers and farmers from the north and Indian peasants from the center and south of the country soon mobilized. Their initial targets were the wealthy *hacendados*, foreign capitalists, and other perceived class enemies. Once the rebel armies finished off the federal army, they battled amongst themselves for the domination of the country. The Mexican Revolution was waged in every corner of the country for ten bloody years. Out of a population of 15 million, it is estimated that one million people lost their lives.

The modern Mexican nation was forged by the ten years of constant warfare. During the Revolution, peasant armies fought in every region of Mexico. The experience changed the way the participants viewed themselves and their nation. The Revolution took peasants from remote villages and ranches and forced them to interact with other people from all over Mexico. They formed their own armies and placed their leaders into positions of power. For the first time, the country's peasant masses began to see themselves as Mexicans. Having fought and won a revolution, Mexico's peasants had a certain degree of social control over their destiny for the first time since the arrival of the Spanish.

The man who forged the modern Mexican political state was President Plutarco Elias Calles (Cáh-yes). Having assumed the presidency after the assassination of Alvaro Obregon, Calles found himself in the same position as Diaz had found himself 45 years earlier. After ten years of constant warfare, Mexico had many generals, revolutionary armies, and political factions that could still plunge the exhausted nation into more chaos. Calles' task was to tame and control the wild social forces the revolution had set into play.

Calles did this by institutionalizing the revolution through the creation of a new broad-based political party. Calles' goal was to make the political party synonymous with the Mexican government. The strength of Calles' new party was that it incorporated the many competing elements and factions of Mexican society into one huge political party. The new party immediately embraced and incorporated more than 1,000 different political groups. Every segment of Mexican society was represented in the new party, which included labor, peasant, popular, and military sectors. Calles used a modified *pan o palo* approach. By joining the new party, the different factions could share in the spoils of government; alternatively, they could remain outside the government and receive nothing.

Calles' party took on a new name during the presidency of Lazaro Cardenas (Láh-sah-roh Cár-day-nahs). Ironically, it became the Partido Revolucionario Institucional (PRI) (Par-tée-tho Re-vo-loo-syon-áhr-yo In-stu-too-syon-áhl), or the Institutional Revolutionary Party. The PRI/Mexican government has taken on many of the worst characteristics of the governments that preceded it. The party/government is highly centralized, anti-democratic, inefficient, and oftentimes corrupt. The party/government has been able to rule Mexico since 1929 because of the political vision created by President Lazaro Cardenas in the 1930s.

President Calles ended the war, but it was President Cardenas who brought the peace to Mexico. He did this by implementing laws that caused a profound social revolution to take place in Mexico. His greatest single act was to begin a program of land reform. The huge *haciendas* that had dominated rural Mexico since the Spanish *encomiendas* of the 16th century were split up and divided. To accomplish this, President Cardenas looked back into Mexican history and created a program of land-ownership known as the *ejido*. Instead of distributing land to the individual peasant families, under the *ejido* (ay-hée-tho) system, land was distributed to the community in which the peasants lived. The land could not be sold. As long as a peasant family remained in good standing with the community, they would have access to a parcel of land.

During his presidency, Cardenas distributed 46 million acres of land, benefiting 750,000 families.[16] This massive redistribution of land is the most important explanation as to why there has been political and social stability in Mexico since 1929. The revolution was fought over control of Mexico's agricultural land; with this land in the hands of the country's peasants, there was no longer reason for war. Mexico's peasants may suffer from great poverty and neglect, but as long as they have access to their lands, they have not been willing to mobilize for yet another social revolution.

Cardenas followed an economic policy that can best be described as economic nationalism. His government passed a series of laws that assured that Mexico's economy would no longer be dominated and controlled by foreign companies. As part of this plan, Cardenas moved to nationalize and control Mexico's natural resources. One of Cardenas' greatest moments came in 1936, when he expropriated and nationalized the foreign companies that owned and controlled most of Mexico's oil fields.

The Mexican government has been able to hold power since 1929 because the government and its political party, the PRI, have been able to successfully balance these two seemingly contradictory approaches established by Calles and Cardenas. Through the use of corruption and strong-arm tactics, the PRI/Mexican government has been able to establish the political and social stability necessary for sustained economic development. At the same time, the PRI/Mexican government has also been able to pursue some socialist policies. Although there is still great social injustice in Mexico, the Mexican government has nevertheless been able to provide its rural and urban poor with more social services than any other country in Latin America.

Another important reason why the PRI/Mexican government has been able to hold onto power for so many years is because of the immigration opportunity the United States has provided for so many of Mexico's poor. The United States' insatiable need for cheap labor has given millions of Mexicans the opportunity to live and work in the United States. Through remittance of monies to their families, these migrants have pumped billions of dollars into the Mexican economy. The opportunity for millions of Mexicans to migrate to the United States has provided Mexico with a much-needed safety valve while at the same time providing the United States with a hardworking, youthful, and cheap work force.

Since the early 1980s, Mexico has been in a state of crisis. The accumulation of decades of political and economic corruption forced the Mexican economy into a state of collapse. Salaries and living standards dropped dramatically. The Mexican economy is only now beginning to recover. It is a credit to the Mexican political institutions that this severe depression did not cause any severe outbreaks of violence. The Mexican government has been very successful in controlling the powerful social forces the severe economic depression has unleashed.

In the past, the PRI/Mexican government has shown the ability to transform itself to meet new crises. The PRI/Mexican government is not wedded to any one political ideology. Mexico's leaders will use whatever policy or ideology they need to survive the current crisis and hold onto power. As Mexico moves into the 21st century, the PRI/Mexican government faces its greatest dilemma. On the one hand, Mexico needs to make significant economic and political reforms if it wishes to develop and remain economically competitive. On the other hand, these same necessary reforms mean that the PRI/Mexican government must relinquish the absolute power that it has held since the Mexican Revolution. The future course of Mexican history will be measured from where this balance is struck.

Mexico is an ancient nation with a long and troubled history. Its people are deeply aware of the powerful historic forces that have come together to form them and their nation. Whatever the future course Mexico takes as a nation, that path will be profoundly informed by an understanding of Mexico's history.

Endnotes

1. Alan Riding, *Distant Neighbors: A Portrait of the Mexicans* (New York: Knopf, 1984), pp. 199-201.
2. Robert Ryal Miller, *Mexico: A History* (Norman, OK: University of Oklahoma Press, 1985), p. 49.
3. Charles Gibson, *The Aztecs Under Spanish Rule* (Palo Alto, CA: Stanford University Press, 1964), p. 58.
4. Peggy Liss, *Mexico Under Spain 1521-1556* (Chicago: University of Chicago Press, 1975), pp. 119-125.
5. Miller, op cit., pp. 124-125.
6. Ramon Eduardo Ruiz, *Triumph and Tragedy* (New York: W.W. Norton, 1992), p. 64.
7. Bradford Burns, *Latin America: A Concise Interpretive History* (Englewood Cliffs, NJ: Prentice Hall, 1972), p. 33.
8. Riding, op cit., p. 33.
9. Henry Bramford Parkes, *A History of Mexico* (Boston: Houghton Mifflin, 1969), p. 180.
10. Riding, op cit., p. xi.
11. Parkes, op cit., p. 233.
12. Miller, op cit., p. 233.
13. Miller, op cit., p. 236.
14. Miller, op cit., pp. 267-271.
15. Miller, op cit., p. 272.
16. Riding, op cit., p. 54.

1 LOS ESTADOS UNIDOS MEXICANOS AND THE UNITED STATES: COMPARING NATIONAL SYMBOLS

Introduction:

In this activity, students analyze a variety of symbols significant in the U.S. or Mexican cultures. They describe the images and attributes the symbols convey about the national characteristics of these countries.

Objectives: At the end of this lesson, students will be able to:

1. Identify and explain the significance of several U.S. and Mexican symbols.

2. Make hypotheses about what can be learned about Mexican history and culture by examining several symbols.

3. Explain similarities and differences in U.S. and Mexican responses to particular symbols.

Time: 1-2 class periods

Materials: Copies of Handout M-1 for all students.

Procedure:

1. Tell the class that they are going to be studying Mexico. Ask them to speculate about the reasons why learning about Mexico might be important to people in the United States. Be sure that the following reasons come out in the discussion:

- Mexico is the cultural homeland of the fastest-growing segment of our population.
- A 2,000-mile porous border separates our governments but not our economies and cultures.
- Political instability in Mexico would have dire consequences in the United States. The Mexican government is currently confronting overwhelming socioeconomic problems and population pressures.
- Mexico is an important trading partner – ranking third among countries that purchase goods from the United States. Over two-thirds of all products imported to Mexico come from the United States.

2. Next, ask students to define the word *symbol*. A symbol is a concrete object that represents an idea, belief, value, or other intangible concept. If students have trouble identifying any symbols, ask them what their school team mascot is. What feelings does the school symbol evoke? What symbols are personally important to students?

Adapted from "Japan and the United States: Comparing Symbols," an activity by Ted Kempton in *Japan in the Classroom* (Boulder, CO: SSEC, 1987).

3. Divide the class into small groups and distribute Handout M-1. Have each group label the objects as best they can and then divide the objects into two groups – those that are American symbols and those that are Mexican. Students will probably achieve this through the process of elimination, recognizing the U.S. symbols fairly easily and designating the unfamiliar symbols as Mexican. Note that some symbols may be identified with both cultures.

4. As a class, review the handout, making a two-column list of U.S. and Mexican symbols on the board and labeling each item correctly. If students have not been able to recognize the exact name of a Mexican symbol, provide the information using the **Teacher Background Information** following the **Procedure.** Explain that some symbols have common meanings in the two countries while others evoke very different – even opposite – responses.

5. Have students return to their small groups. Instruct each group to generate a list of adjectives that each symbol in the U.S. column brings to mind. Groups should come up with three or four adjectives. Students should also consider which U.S. symbols might evoke positive responses among Mexicans (Coca-Cola) and which negative (covered wagon). After the groups have assigned adjectives, instruct each group to pick one symbol that best represents the United States and prepare reasons for their choice.

6. Through whole-class discussion, consider the adjectives the students have generated for each item. List these on the board. Have each group present and defend its choice for most representative symbol. Have the class reach consensus on the best symbol. Ask if all U.S. citizens would agree on one symbol. Discuss reasons people are drawn to different symbols.

7. Have students work in small groups to complete the same adjective assignment for the Mexican symbols. Allow about ten minutes for this task.

8. Bring the class back together and list the adjectives on the board. Review the adjectives selected by the students. Where necessary, explain Mexican meanings and adjectives for symbols that students have interpreted differently. Expect to spend time on symbols that are opposite in meaning. As a large group, compare the types of adjectives assigned to the U.S. and Mexican symbols. Use the following questions to stimulate discussion:

- Were any of the same adjectives used? Discuss similarities in characteristics – courage, strength, love of beauty, etc.
- What differences and similarities did students see between the two nations' symbols?
- Which symbols are used to denote strength and courage?
- Which symbols show love of beauty?
- Which symbols have opposite meanings in different cultures? Discuss the eagle and serpent as two examples of symbols having very different meanings. (A serpent is a symbol of Satan for many Christians, yet a life-giving source in Mexican culture.)
- How might different meanings for symbols influence communication and understanding between Mexico and the United States? How can the United States benefit from a deeper understanding of Mexican culture?

9. Describe for students a cartoon that appeared in a newspaper in Mexico City. It showed the Statue of Liberty, gagged and holding a newspaper filled with "blablabla." Discuss these questions with students, or ask students to write their answers:

- How did that cartoonist's ideas about the Statue of Liberty differ from the traditional image?
- What idea was the cartoonist expressing about liberty in the United States?
- Do you think most Mexicans agree with the cartoonist's views?

- Do you agree or disagree with the cartoonist? Explain your answer.

The Statue of Liberty is commonly used as a symbol in cartoons in the United States and around the world. Students could search for other cartoons and analyze how this symbol has been used and for what purposes. Students could also draw their own cartoons using the Statue of Liberty.

Enrichment:

Students can complete further research to expand the list of symbols or demonstrate understanding of the historical and contemporary significance of Mexican symbols.

Teacher Background Information:

The symbols used in the handout are identified below; possible adjectives and descriptions are also provided.

1. U.S. Eagle: strong, powerful, aggressive, courageous, clever.

2. Feather serpent: earth, sky, rain, fertility.

   The serpent is the source of all life. The achievements of Topeltzin Quetzalcóatl, an 11th-century leader, are interwoven with the Feathered Serpent God. Quetzalcóatl taught the skills of agriculture and arts, as well as the ritual calendar, to mankind.

3. Matador: graceful, artistic, brave.

   The bullfight is a national pastime. Mexicans do not regard bullfighting as a contest between man and animal but rather as a beautiful and poetic art that could be compared to the ballet or to a sculpture. The art involves enticing the bull with the cape and then plunging the sword as the animal attacks. The meat is given to the needy.

4. Baseball player – manly, competitive, aggressive, wealthy, strong.

5. Ancient calendar: cyclic, religious, ordered, symbolic, having continuity.

   The calendars developed by the ancient civilizations of Mexico are a proud reminder of Mexico's connection with ancient times. This twenty-ton Aztec calendar now resides in the Museum of Anthropology. The calendar bears the face of the sun god, Tonatiuh. He is clutching human hearts in his claws. The Aztecs believed that this era would be destroyed by an earthquake.

6. Uncle Sam: friendly, strong, kind, tough, wise.

7. Coca Cola: fun-loving, energetic, youthful, vivacious.

8. Virgin of Guadalupe: saintly, miracle worker, beautiful, mother to Mexico.

   "The Dark Virgin" was the protectress of those who fought for freedom from Spain. To this day she is the patron saint of Mexico. She is honored by the poor for the many miracles that she performs on her behalf. They approach her on their knees to show love and respect. Her image can be found on taxis, sombreros, jewelry, in kitchens and saloons. Her likeness is made of plaster, marble, wood, stone, clay, and plastic.

9. Covered wagon: adventurous, brave, civilizing, family-oriented (from a Mexican perspective, this symbol may represent greed, aggression, and acquisitiveness).

10. Skull and skeletons: death, other worldly, ancestral, life-affirming.

    Mexicans consider death an integral part of life. Return of the dead is observed on November 1 and 2. The living put out a feast and wait for dead friends and family to return. Respected, deceased relatives who come to call are treated courteously. The dead return to say hello or possibly do a little business. The cemeteries are filled with picnickers who sing, dance, drink, and decorate tombs.

11. Statue of Liberty: freedom, liberty, home, welcoming, kind, open, strong.

12. Mexican Seal: The seal contains many symbols.

    Emblem: This emblem is on the Mexican flag. Specific items to be mentioned include an eagle (symbol of the sun), serpent (life), cactus, rock, water. The god Huitzilopochtic promised the Aztecs they would settle in a land where every need would be provided. In 1325, they saw the sign promised by their god. On a small rocky island in a lake, they saw an eagle devouring a serpent while perched on top of a cactus. Mexico City stands on that spot today.

13. Jaguar: strong, powerful, protective.

    Aztec warriors entered battle dressed in pelts of jaguars. The jaguar was the most powerful predator in the Americas, a nighttime hunter able to swim and climb trees.

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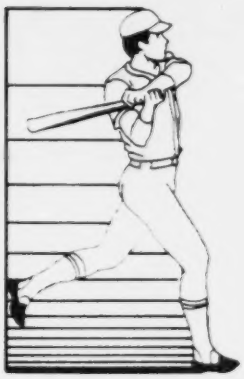

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2 LAW AND AUTHORITY IN THE AZTEC EMPIRE

Introduction:

This lesson explores the sources and functions of law and authority in the Aztec Empire. Students learn how authority was exercised through the government, the social structure, and the family. Students also examine laws designed to protect the integrity of the family, social order, and the security of persons and property.

Objectives: At the end of this lesson, students will be able to:

1. Describe how the Aztecs used authority to regulate individual behavior.

2. Create a law using pictorial language.

3. Infer important values in a society by understanding some of its laws and how individuals and institutions in the society use authority.

Time: 2 class periods

Materials: Copies of Handouts M-2, M-3, and M-4; colored pencils or markers.

Procedure:

1. Begin the lesson by discussing with the class how they feel about the fact that so many rules regulate their daily activities. Ask them to identify people who exercise authority over them.

2. Distribute Handout M-2 and ask students to read the first two paragraphs. Discuss the meaning of authority and the sources of authority, making sure students understand that custom, institutions, laws, and moral principles are sources of authority. Also discuss the uses of authority in society.

3. Allow time for the students to read the remainder of the handout. Divide the class into groups of three and ask students to respond to the questions in the "What Do You Think?" section at the end. You may want to check for understanding of the material before students begin their group work. Do this by discussing the organization of the government, social structure, and family. When students have concluded their group work, discuss their responses to the questions.

4. Distribute Handout M-3, asking students to follow the instructions on the handout. You may want to provide colored pencils or other art materials for their drawings. Students may work individually or in groups of three. Instruct students that before they begin their drawings, they should first write out their laws on a separate sheet of paper. After students have completed their drawings, ask them to share their work with the class.

5. Distribute Handout M-4. Tell students to read the material and identify laws that may be similar to the ones they created in the previous step.

6. Divide the class into groups of three and have them respond to the questions in the "What Do You Think?" section of the materials. Ask them to share their responses with the class. The questions are designed as a means of bringing closure to the lesson.

HOW THE AZTECS USED AUTHORITY TO REGULATE INDIVIDUAL BEHAVIOR

Do you think there are too many rules? Nearly everything we do is governed by some type of rule. If we think about it, we can cite numerous examples of people who have authority to govern us and to regulate our behavior. Parents, teachers, police officers, and government officials are just some of the people who use authority to control our actions. Having authority means having the right to tell others what to do. Authority, and how we use it, comes from a society's customs, institutions, laws, and principles of morality.

Have you ever wondered what might happen if there were no rules or people in authority? What problems might arise? Every society uses authority to help it solve problems. Authority can help us protect our rights and freedoms; it can be used to ensure fair distribution of resources and burdens; and it can help us manage conflicts and disputes.

In this lesson you will learn how the Aztec civilization of central Mexico used authority to organize and manage their society. The way the Aztecs set up their government, their social structure, and the family regulated the behavior of the people who lived in the society.

Authority of Aztec Government

Authority at the highest level in Aztec society was based on a complex governmental structure called the **city-state**. A city-state included a large community or city, the surrounding land, and smaller dependent villages. Central Mexico had many city-states of varying sizes and importance. The area, however, was dominated by three city-states bound together by an agreement called the Triple Alliance. The alliance included the cities of Tenochtitlan, Texcoco, and Talcopan. The alliance was dominated by a powerful ruler, or *gran rey* (ray), who lived in Tenochtitlan. The *gran rey* we remember today was Moctezuma.

The Triple Alliance created a complicated web of partnerships and hostilities with their neighbors. They treated some tribes as allies and others as enemies. In this manner the Aztecs were assured many trading partners, plenty of opportunities to train their warriors, and a steady supply of human victims for sacrifice to the gods.

The exercise of authority in each city in the alliance was directed by a ruler called a *tlatoani* (tlah-toh-áh-nee). The *tlatoani* had authority to wage war, form alliances with other city states, and administer conquered territories. At home the *tlatoani* had authority to run the affairs of the city, serve as a judge, and supervise religious festivals. The *tlatoani* also served in the court of the dominant *tlatoani*, or *gran rey*, in Tenochtitlan.

The *tlatoani* was basically a monarch. His authority was hereditary (by family) and he held it by divine right. He was the earthly representative of the gods. Selection of a *tlatoani* was made by the Council of Four. The members of the council were all from one family. The candidates, too, were members of that same family. To qualify, each candidate must have proved his ability in battle and have the skills to speak well and be diplomatic. Basically, the Council of Four decided who in the family was qualified to rule. When a *tlatoani* was chosen in one city, the other two cities in the alliance had to agree to the choice. A *tlatoani* served for life.

A supreme council of 12 members assisted the *tlatoani* in the exercise of his authority. All political matters were supervised by the supreme council. Four members of the council were in charge of warfare and four supervised diplomacy. The other four administered justice by serving as judges.

Each city-state was divided into four districts called the *gran capulli* (cahl-póo-yee). Each *gran calpulli* chose three members of the supreme council. A district was further subdivided into neighborhoods also called *calpulli*. What these subdivisions were and how they were decided is not entirely clear. *Calpulli* appears to be a word applied to many different territorial divisions within the city-state.

Authority within the *calpulli* was placed in the hands of a local leader. His authority appears similar to that of a parent. The leader acted as a father-figure to the residents of the neighborhood. He had the authority to decide how the residents could use the common lands of the *calpulli*. He also collected from the residents the tribute, a form of taxation, owed by the *calpulli* to the city-state. Frequently, he was called to represent his neighbors in court.

Authority Within the Social Structure

In Aztec society everyone belonged to a social class. Your social status was hereditary; you were born into it. Because a family's status imposed certain rules of behavior on people, the Aztec social structure exercised authority over people's lives. People only had rights and responsibilities according to their family's status.

Think of social class as a pyramid. At the top was the *tlatoani* and his family. Next were the four heads of the *capulli* and their families. They received their status from the *tlatoani* and were responsible to him. At the third level of the pyramid were the nobles. They were the "children," as their title implied, of the leaders. A noble family owed service to both the tlatoani and the *capulli*.

At the bottom of the pyramid were the commoners. They were the largest group; they were responsible for paying tribute and providing service to the *capulli*. Commoners could earn a higher status through military service. Indeed, some ranks at the nobility level were reserved for this purpose.

A warrior's social standing depended on his ability. If he captured an enemy in battle, he earned certain titles and the right to wear the hairstyle and clothing associated with his new status. The reputation of the enemy and the number of captives taken earned additional titles and status. One responsibility of a warrior was to offer his captives for human sacrifice in religious ceremonies. At the conclusion of the ceremony, the body was returned to the warrior, who then gave a splendid cannibalistic banquet for his family and friends.

Slavery, too, was a class, but it was not hereditary. You could acquire this status by selling yourself, or your children, into slavery. In this way, slavery was an economic condition eventually removed by working off the debt. Slaves kept their individual liberty. Some people were slaves because the courts sentenced them to slavery for crimes committed. Slaves who misbehaved were punished publicly and could be sold to new masters. A slave who was sold four times because of negative behavior was sacrificed to the gods.

Authority of the Family

The Aztec family was the basic unit of the society. As such, it exercised the greatest authority over the individual. A family was formed through marriage, and the father and mother were the basis of the blood family. Having more than one wife was legal, but such relationships were secondary. Marriage among blood relatives was strictly prohibited.

An Aztec family was very large, including all the people who shared a common patio. The patio was usually a fenced area that included one or more houses. The family members were parents and children, secondary wives and their children, aunts and uncles and their children, grandparents, domestic servants, and slaves.

Family authority resided in the father. It was absolute. If children were incorrigible, the father could sell them into slavery. The older relatives decided the price, conditions, and length of the child's enslavement. Female children were under the authority of the mother, who trained them to carry on the duties of motherhood. A male child lived with the family until he reached puberty. He then went to live in a bachelor dormitory, where he trained for either public service or the military. The young man lived there until he married. At marriage he and the bride returned to live with his family.

Many rights that people enjoyed were family rights. The most important right was the right of inheritance. This right combined the two most important ideals of the society, family and property. At the father's death, the eldest living son inherited the family's property and the dominant position of authority. Occasionally, a male from a secondary marriage was the inheritor. Along with property and authority came the responsibility to care for the family and to pay the family tribute to the *calpulli*.

The right to property included personal and real property (i.e., property that could be moved and property that could not). The family had rights to the land it occupied as living space. It also had rights to land for cultivation. The family farm was located some distance from the living quarters. The Aztecs recognized the right to transfer property through sale, loan, exchange, rent, donation, or judicial order.

The family also had a right to engage in trade. Women and children were permitted to buy and sell goods in the marketplace if they had the permission of the father. This right of trade extended to commerce with tribes outside the city-state. Any failure to complete the terms of a contract was punishable by the courts. However, having no money to pay your debts was not a punishable offense.

Using Authority to Regulate Behavior

We have already seen how the social structure and the family informally exercised authority to regulate individual behavior. Both class and family had certain rights and imposed certain roles and responsibilities on their members. Individuals were reminded often of their responsibilities and of the proper behavior associated with their status.

The Aztecs had two other systems for regulating individual behavior. One was religion. Certain diseases or physical impairments were seen as punishment from the spiritual world. People believed that the gods visited those who did not follow the rules. The gods inflicted diseases, swelling of body parts, or lameness. If someone was troubled by these problems, the source of the suffering was clear. The second system for regulating behavior was the law, which formally defined acceptable behavior. The punishment for violating a law was quick and severe.

The Authority of the Law

Aztec language was unwritten, making it difficult to enact too many laws. It was hard to illustrate abstract ideas through a pictographic language. The people had to memorize the laws, so there couldn't be too many of them. Because laws were unwritten and were passed on by memory, they had the characteristic of custom. How a matter had been handled in the past became the traditional method for deciding similar situations in the future. Custom determined the decisions of the courts and the types of sentences they imposed on those who violated the law.

Aztec law recognized two levels of criminal behavior: minor offenses and serious crimes. Minor offenses included telling untruths or gossip. Liars and gossips had their lips cut so they could be recognized by others. Serious offenses included crimes against people and property, crimes against the family, and crimes against public order.

Death to a thief

Punishment for adultery

Punishments for those who violated the morals and social customs

Other punishments

The Authority of the Courts

In each city-state, four members of the supreme council served as judges. The judges lived in the palace; each had a chamber where he heard cases. Only serious cases, civil and criminal, were heard by these courts. People travelled to the palace to appear before a judge. All judicial decisions were issued from the palace.

An executor assisted each judge. The judge decided the case, and the executor announced the decision. The executor's responsibility was to forward the decision to the sheriff and to make sure the sheriff carried out the sentence. For noblemen as well as commoners, imposition of sentence was swift as well as harsh. Prisons did not exist as a means of punishment. The Aztecs did not believe that anyone could be useless to society. Jails were only holding pens for persons awaiting trial or imposition of sentence.

Lower courts existed at the *calpulli* level. Minor cases were heard by judges who actually lived in the neighborhood. The local judges had authority to examine witnesses and settle disputes, but they could not pass sentence until the state judges reviewed the case. The state judges met every 80 days to review lower court cases.

At the top of the judicial system was, of course, the ruler. His chamber was located above the other chambers, and when acting judicially, the king did not consult the supreme council. Criminal cases could be appealed to the ruler, but in civil cases no means of appeal existed. Apparently, no death sentence was carried out without notifying the ruler.

What Do You Think?

1. How would you define authority? Do you think the way the Aztecs exercised authority differs from the way societies use authority today? Why or why not?

2. How did the Aztecs use authority to establish order in their society? How did they use authority to settle disputes? How did they use authority to protect rights?

3. How did not having a written language limit the authority of the law? How did custom limit the authority of the courts?

4. What inferences can you make about which values were important in Aztec society by studying the people and institutions who exercised authority?

CREATE A LAW

You have learned how the Aztecs used law and authority to govern their empire. Suppose you were a *tlatoani* or a member of the supreme council. Create a law for the people living in your city-state. Remember, you have no written language. You must illustrate your law through pictures. Try to make your law as clear and understandable as possible; the citizens will have to memorize it.

1. A law giving women and children the right to trade in the marketplace.

2. A law prohibiting public drunkeness.

3. A law that directs commoners to pay an annual tribute to the city-state.

4. A law prohibiting a particular behavior.

CRIME AND PUNISHMENT IN AZTEC SOCIETY

The following are examples of serious violations of the law and how offenders were punished.

- **Murder** and **rape** were crimes against the person. An act of homicide met with the death penalty, either by hanging or drowning. If one should murder a woman's husband, and the woman was willing to forgive the crime, the murderer then became the slave of that woman. He was to care and earn a living for the children of the deceased. Rape, too, was punishable by death.
- **Adultery** and **abortion** were crimes against the family. Adulterous acts were punished by torture and stoning to death in the market place. No matter one's social status, one was not spared this severe penalty. If the adulterers were of the upper classes, the bodies were tarred and feathered before burning. Abortion was punished by hanging both the mother and the person performing the abortion.
- **Burglary** and **robbery** were crimes against property. Theft from a home meant placement in slavery to the person whose property was stolen. The thief, now a slave, could be sold for the amount of the property stolen. Robbery on first offense was punished by slavery and on second offense by death. In other types of theft, the offender was given an opportunity to pay for the item(s); if he did not do so, he was enslaved. Repeated acts of thievery resulted in punishment by death.
- **Treason** was a crime against public order. A slave who committed treason against his master was punished by death. Treason committed by passing information to an enemy during war resulted in the dismemberment of one's body, the confiscation of all properties, and enslavement of all the family.
- **Drunkenness** was a serious crime that caused disruption of the public order. Drunkenness by a public official was punishable by death. Liquor could not be consumed without the permission of one's superior or of a judge, and permission was usually granted only to persons who were ill or over the age of 70. At weddings and feasts, those over the age of 30 were allowed two cups of pulque, a liquor made from cactus plants. Drunken behavior among commoners was punished by shearing their hair in the public plaza. Alcoholics were not considered worthy to live in the neighborhood, and their homes were destroyed; they were also denied employment.

Certain crimes were offenses associated with one's status or occupation. Some laws applied to land ownership, to the responsibility of public officials, and to the duties of soldiers in battle. The following are some examples.

- The use of clothing, ornamentation, and housing was carefully regulated by law. Only the ruler could wear the finest cloaks of fur.
- Priests who kept concubines were executed; the "tax" collector who collected too much also met with death. So did the judge who took bribes.
- Judges were expected to be ethical and moral persons. Minor transgressions were admonished by the other judges; serious violations of ethics were punished by the king, usually by death.
- Disobedience on the battlefield resulted in death by beheading. A major objective of Aztec warfare was the capture of enemy soldiers. If one took another warrior's captive, the offense resulted in death by hanging.

What Do You Think?

1. How did the law protect the family? Do you think these laws were fair? Why or why not?

2. How did the law protect property? Which do you think the Aztecs valued more, life or property? Explain the reasons for your response.

3. How did the law protect public order and public morals? Do you think a government should use its authority for such purposes?

4. Do you think it was fair that some classes in Aztec society were treated more harshly than others? Why or why not?

5. What inferences about Aztec society can we reasonably make from these examples of Aztec law? Do you think any of these inferences are still valid in Mexico today? Why or why not?

3 LIVING LAW VS. WRITTEN LAW: CONFLICT RESOLUTION IN RURAL MEXICO

Introduction:

Mexican Indians officially have the same rights as everyone else. However, many of their traditional ideas about law and justice survive in spite of official efforts to impose governmental systems on their communities. This lesson introduces students to some of the legal, social, and economic problems of Indians in rural Oaxaca and to dispute resolution techniques that are used by the Chatino Indians today.

Objectives: At the end of this lesson, students will be able to:

1. Describe methods of dispute resolution practiced in rural Mexico.

2. Explain why law as it is applied in the community is different from the law as it is written.

Time: 1 class period

Materials: Copies of Handouts M-5 and M-6 for all students.

Procedure:

1. Familiarize students with the history and culture of Chatino villages using Handout M-5. Emphasize the fact that the Indians are living in two cultures – that of the local village and that of their nation of Mexico. Review the methods of dispute resolution available to the Indians and discuss which ones seem most appropriate to the needs of the people.

2. Tell students that they will be getting an overview of four disputes that have arisen in Oaxaca within the past few years. Provide Handout M-6 and ask students to read each of the cases and develop tentative responses. Ask them to use information about the culture to determine why problems have occurred and how they might be solved.

3. Form groups of three to five students. Each group should discuss one of the cases for presentation to the class.

4. Discuss each case, starting with students' ideas about how the case will be resolved and then presenting the resolution that actually occurred (see **Teacher Background Information**). How do economics and social pressure affect level of violence? How do outside forces create factionalism and blood feuds?

5. Tell students that many migrant workers in U.S. agriculture come from this area of Mexico. Ask students to develop some hypotheses about the following questions:

Based on "An Ethnography of Law and Violence in Rural Oaxaca, Mexico," by James B. Greenberg, *Arizona Journal of International and Comparative Law*, 1988.

- What experiences or perceptions of the law in Mexico might create problems or misunderstandings for Mexican Indians who come to the United States?
- Which of the dispute resolution techniques might cause problems for Mexican nationals in the United States?

6. Ask students to consider the following case study. Does it support their hypotheses? How does what they have learned about Indians and the Mexican legal tradition help explain the case? Read the case aloud and discuss these questions.

> Is slavery still possible in the United States? In 1990, a landowner in southern California was charged with slavery. The petition filed in federal court said that the workers were "peasants from some of Mexico's poorest areas." According to a lawyer working for the California Rural Legal Assistance program, many of the workers were Zapotec Indians from Oaxaca, Mexico.
>
> The charges came about as the result of an extensive investigation that provided evidence supporting the claims of workers who escaped from the ranch. (Escape was difficult, since the ranch was surrounded by a barb-wired-topped seven-foot plexiglass and chain-link fence with a double padlocked gate; the entire fence was encircled by a moat.) The charges made by the workers included the following:
>
> - Workers sometimes worked up to 16 hours a day six days a week for $1 an hour. They were not allowed to drink water or go to the bathroom while working.
> - Workers were forced to live in filthy conditions, for which they were charged as much as $80 a month rent.
> - Workers were punished by being locked up, punched, slapped, or pinched. The rancher threatened to turn workers over to immigration officials if they tried to leave.
> - Workers were forced to have their heads shaved. They were charged for these "hair cuts."
> - Workers had to buy their supplies and tools from the rancher at very high prices. These supplies included blankets, sheets, a pillow, toilet paper, and food. The charges for these supplies were deducted from the workers' earnings.
> - A fee for smuggling undocumented farm workers into the United States was deducted from their wages. A worker could not leave the ranch until he had earned $435 to pay the smuggler.

Following the discussion, you may wish to tell students that the landowner eventually pled guilty to charges of racketeering; the charges of slavery were dropped. The rancher was forced to pay about $1.5 million in back pay to 300 farm workers.

7. End the lesson by having students discuss the problems or misunderstanding U.S. citizens might experience while visiting or living in a Chatino village.

Teacher Background Information:

The following information will be useful in discussing the resolutions to the conflicts described on Handout M-6.

Case 1: While several family members wanted to attack the priest directly, Fortino decided to approach the problem through political patronage. Working behind the scenes, he found political friends who could act as intermediaries. They approached the archbishop on his behalf and requested that the

church pressure the priest to leave the family alone. It was agreed that if anything happened to Fortino's son, the priest would be held responsible. A year after the archbishop intervened, Luis and Maria returned to the village.

Case 2: This was a public murder witnessed by many people. The villagers surrounded the son, preventing retaliation and allowing the man who had stabbed Jose to escape. In the villagers' way of thinking, the murder was justified. Not only was the victim a mestizo from a village with which they had had conflict, he had also endangered their lives. A warrant was issued by the district court for his arrest, but no attempt was made to arrest him.

Case 3: The next day the judge summoned the relatives from both factions to court because he was concerned that this conflict was getting out of hand. While a certain level of violence is tolerated, the principals in this conflict were leaders of rival political parties. The incident could easily escalate into a dangerous confontation. He decided not to apply the letter of the law. He explained that charges would not be filed against members of either family if they would promise no further violence. He warned that if there was violence, both parties would go to jail for five years.

Case 4: Emiliano gave a full report to the town. He explained that the town of Juquila had paid a $2,000 bribe to the director of the Office of Communal Lands in 1970 to get a presidental resolution of the boundary disputes. Emiliano argued that they needed to pay a bribe to give force to their petition. The villagers each contributed money, showing that there was consensus regarding this decision to try to regain the title to the land in dispute.

Emiliano and an advocate from the peasants council went to the meeting, but representatives from the other town did not show up. The case was turned over to a special unit for a decision. The officials also advised the village to invade the plantation and come back if there were any problems with the local public prosecuter.

The village had a heated argument over how to proceed. The leader and secretary opposed invading the plantation since written permission had not been given. Others thought those opposing an invasion were traitors to the village and friends to the plantation people.

The decision was made to put the question into God's hands. By bringing the priest from Juquila to say special masses, the people were showing a "no confidence" vote in their leader and secretary. They bypassed the authority figure in favor of a decision by consensus. The mass was well attended and the collection very large -- evidence of widespread support for the decision to invade.

Emiliano presented his case to the elders and all the men of the village. The village voted to remove the leader and invade the plantation the following morning. "Our patron saint Santiago will give us his sword." They cut fences and started to clear fields for corn planting. When one of the "owners" appeared, he was gunned down. A panic followed, and Emiliano and his committee set off to report what was happening to the Communial Lands Office.

Emiliano was accused of the "assassination," but charges were never proven. Emiliano continued the fight by organizing a second invasion of the plantation after he secured written permission from the Communal Lands Office, but his authority had been compromised. The plantation "owners" secured an injunction and called in state police, who opened fire on villagers. Several were wounded and others arrested. The village was once again divided into factions.

CHATINO VILLAGES AND DISPUTE RESOLUTION: LIVING LAW CASES FROM RURAL OAXACA

Living Law vs. Written Law

Struggles over land remain common throughout Mexico. Nowhere are these struggles more evident than in geographic areas where Indian communities have lived for many years. Although Indians have not shared all the cultural values that underlie the state institutions of land distribution and political organization, they have adapted to those institutions in order to survive. Demands for *ejidal* (communal) lands continue to be high. The lands already distributed are often insufficient for the community.

Indians (and other *campesinos*, as well) often find themselves in violent conflict over the land and other resources. Sometimes, Indians invade lands held by large land-holders; other times, communal lands are invaded by large land-holders. Indians usually come up short in such struggles, because local political, administrative, and judicial structures are controlled by landowners' allies.

While the historic right to land is clearly at stake in these struggles, other important questions of human rights also are involved. Amnesty International has found disproportionate populations of Indians imprisoned in southern Mexico. Many of them have been jailed in violation of common standards of justice. In addition, there are reports of torture and assassination by paramilitary "death squads" who work in behalf of large land-holders. The Mexican government denies or trivializes these reports.

Villages, neighborhoods, and families can be set against one another by the manipulation of favors and punishment. Large land-holders and their government accomplices at all levels commonly use divide-and-rule strategies. Rarely does conflict develop between the true antagonists. Rather, the dominant class or culture usually sets various elements of the subordinate class or culture at war with one another. Where rural violence is encountered, one must look behind the scenes to find exactly who benefits from conflict in the long term.

Background Information

Juquila and its neighboring villages are located in the state of Oaxaca. Bitter battles over coffee plantation lands have plagued the community since the 1930s. Much of the conflict described in the cases is centered on disputes over La Constancia, a coffee plantation that was leased from the village of Yaitepec by a priest at the turn of the century. The priest's sons claimed title to the leased land.

The community has not been successful in petitioning for the return of the land. The plantation owners have formed an alliance with some members of the community, contributing to conflicts that have escalated into a series of homicides. Homicide rates in Juquila are among the highest in all of Mexico – five times the national average.

The introduction of coffee as a cash crop was the beginning of many problems. Fights over the land erupted because people wanted to get the cash from planting the crop on the communal lands. As the price of coffee went up, greed and ambition divided the people. People began to grab land, fence it, and exclude others.

The presence of outsiders has also contributed to the problem. People whose families have lived in the community for years are denied lots, while rich outsiders who have money grab them.

What Dispute Resolution Options Are Available in Oaxaca?

Government Institutions and Processes

1. Call the Police. People in Chatino communities rarely call upon the police to make arrests, partially because police are not respected. Police officers are unlikely to initiate contact because to get involved would be seen as taking sides. Effort is made to apprehend criminals when upper class citizens are involved.

The police force in many Indian communities is comprised of young, unarmed boys, 13 to 18 years of age, who run errands for civil servants.

Army troops can be called in when violence is widespread.

2. File a Claim in Court. State-operated courts are available at the village, district, and supreme court level, but they are expensive to use. Fees must be paid for filing papers, and bribes may be needed to insure a postive outcome.

In the civil court system, the judge actively questions witnesses, defendants, and plaintiffs. Formal procedure must be followed. Penalties – fines and jail sentences – are likely to be far more severe than if decided by traditional means. Indians do not believe that the court views them as equal to mestizos, who are more closely connected to the system through social and family connections.

3. Petition the Government. Mexico has a large bureaucracy. Many agencies are assigned to economic and social development.

Traditional Methods

4. Gossip. People fear the repercussions of being the object of gossip and will go to great lengths to avoid it.

5. Use Patronage. Political bosses can provide access to political power. The more serious a conflict, the more likely patronage, or assistance from a powerful person, will be needed.

6. Agree to Mediation. Family or friends often act as go-betweens in a dispute. The most effective mediation occurs when the mediators are related to the disputants. Town officials can also serve as mediators when complaints are made. Disputants are often encouraged to share a bottle of Mescal (a strong liquor) and encouraged to speak from the heart. Lies will be met with laughs or jeers. The goal is to soothe parties and ask them to give up grudges.

7. Take Direct Action. When communal lands are threatened, every possible means is considered honorable and justifiable. This may include violence or mass demonstrations.

8. Pray. People often call upon their patron saints for help in time of crisis.

LIVING LAW CASES FROM RURAL OAXACA

Case 1—The Highway Ambush

Luis and his wife Maria were ambushed while returning home from a neighboring village. The car was riddled with bullets, but the young couple escaped with minor injuries. Luis and Maria fled to the capitol city of Oaxaca, leaving Luis' father, Don Fortino, to investigate the incident. Fortino is a local leader of Mexico's most powerful political party.

Fortino thought that the ambush was probably related to an earlier event. His son had recently killed another villager during a dispute. No charges were filed by the local prosecuter due to insufficient evidence. Conversations overheard by his daughter led Fortino to conclude that a local priest and his mistress were responsible for the attempted murder. The priest, a leader of a competing political party, also had the support of the communal land organization and Indians in surrounding villages.

- What criminal and civil charges might be made?
- Considering the community, what method of dispute resolution should be applied?

Case 2—A Public Murder

Fortino's half-brother, Jose, and nephew, Manuel, came to Yaitepec from a neighboring village to buy hides and attend the fiesta for the village's patron saint – Santiago. The horse races were a favorite activity at the fiesta. Jose was a little drunk when the horse races began, but he bought a bottle of Mescal and continued to drink. Manuel tried to get his father to leave; Jose put him off, saying "As soon as I finish this drink." Before long, Jose was "roaring" drunk. He pulled a gun from his jacket and fired shots in the air. A local villager standing behind Jose pulled a knife and stabbed him in the back. The blade pierced his lung and he died on the spot. Manuel pulled his knife in retaliation.

- What civil and criminal charges could be brought?
- What method of dispute resolution should be applied?

Case 3—A Blood Feud

Manuel was grief-stricken following the murder of his father. While a likeable person when sober, Manuel was known to be nasty and dangerous when drunk. Two months after his father's death, he went into a deep depression. One day while drinking at the local store, his godmother berated him for not avenging the death of his father. "You're a drunken fool. The man who killed your father is walking free."

Manuel reacted violently. He slashed the woman with his machete, cutting her arms and scalp. Many villagers heard the scream and watched him escape with the machete still in his hand. A crowd gathered, and an army nurse was called to attend the wounded woman. In the crowd there was a great deal of support from members of the opposition political party for lynching Manuel. One person said "Manuel's brother killed my wife and escaped without punishment. This idiot does not deserve to live."

Even Manuel's family was unwilling to defend him. "If they catch him, he has it coming." When Manuel tried to sneak back into town, his enemies fired shots at him. The state police observed the gun fire but did not react. Manuel managed to escape again.

- What civil or criminal problems do you see in this case?

- How should the dispute be resolved?

Case 4—Juquila and Yaitepec Villages Try to Settle a Land Dispute of 60 Years

Authorities in Juquila signed a 25-year lease with a lumber company Etla, giving Etla the right to cut timber on a tract of land north of Yaitepec. Authorities in Yaitepec were very disturbed to learn about this, since they believed the tract in question was their land. They threatened violence if any trees were cut.

Yaitepec officials arranged a meeting with a representative of the Etla lumber company. Emiliano, head of the communal lands committee, took an 1862 map with him to document the mountain tops and river alignments that formed the boundary of the tract. The Etla representative noted that the map had no notary marks and pointed out that the map would be worthless in court. Hoping to aviod violence, he agreed to postpone cutting so that the villagers could take the dispute to the National Indian Institute.

The villagers knew that the National Indian Institute was a *mestizo*-dominated government agency, but they decided to give it a try. The center's director looked at the map and found it to be worthless. Their map was a copy of a 1926 document that had been altered to conform to their claim. Emiliano explained that the original had been stolen by "owners" of the plantation with help from a former leader of the community.

The Indian Institute referred the claim to their superiors in Mexico City. Their decision was not good news for Emiliano and the village of Yaitepec. The agency's ruling favored the Juquila claim, but the authorities suggested that Yaitepec might win their claim for the plantation land.

The Yaitepec then sought help from the National Confederation of Peasants since the villagers faced a bureaucratic maze in the government offices. Officials had little time for the Indians. After two weeks of filling out forms and petitions, they were told that the Office of Communal Lands did not support their claim over the dispute with Juquila. A meeting would be scheduled within the month to see if the communities could work it out themselves. The director took Emiliano aside and told him, "I'll see what I can do if you make it worth my while."

- What civil and criminal charges could be brought?
- What methods of dispute resolution should be used?

4 CROSSING THE BORDER: CASE STUDIES IN MEXICAN IMMIGRATION

Introduction:

Immigration officials report that each day they apprehend approximately 18,000 Mexicans who are living in the U.S. illegally. The same officials estimate that twice that number are not apprehended. While students are generally familiar with the problems of illegal immigration from a U.S. perspective, they know little of the story from a Mexican perspective. This lesson provides oral histories of the coyote, trucker, maid, and returnee as a context for considering both the costs and benefits of illegal immigration from the perspective of Mexico and the United States.

Objectives: At the end of this lesson, students will be able to:

1. Explain historic trends and recent laws related to U.S. immigration policy toward Mexico.

2. Describe some of the experiences of Mexican migrants based on oral histories.

3. Analyze the costs and benefits of Mexican migration to the United States from both Mexican and U.S. perspectives.

4. Propose ways that U.S. immigration policy could be improved based on analysis of impact of Mexican migration to the United States.

Time: 1-2 class periods

Materials: Copies of Handouts M-7, M-8, M-9, and M-10 for all students; two colors of highlighters.

Procedure:

1. Pose the following question to students: What effect is Mexican migration having on U.S. society? Review the information on Handout M-7. Ask students to indicate what information surprises them. Explain that while Americans express the desire to limit immigration, most know little about the long history of migration from Mexico.

2. Provide students with Handout M-8 to give them a historical context for discussing current issues. Explain that policy questions related to immigration from Mexico are not new. Have students use two different colored markers to code events as to whether they are "pushes" or "pulls" on Mexicans. As a large group, respond to the questions regarding U.S. policy and Mexican migration. What contradictions do students see in U.S. policy? What message has been given Mexicans regarding work in the United States? The following quotation from Jorge Bustamante may make clear for students the contradictions involved in U.S. policy:

> (1) A condemnation of the Mexican worker by defining him as a criminal and, at the same time maintaining a demand for his labor. This is reflected in a steadily inceasing flux of Mexican workers each year. (2) Penalizing a worker from Mexico for being in the United States without a visa, but not penalizing a farmer for hiring the former. (3) Maintaining an agency for the enforcement of immigration law, and at the same time exert-

ing budget limitations and/or political pressures to prevent a successful enforcement of the law.

3. Explain to students that Mexican migration is the result of many individual decisions. Provide each student one of the five readings in Handout M-9 and the analysis sheet. Following the reading, ask questions that help students develop a *Mexican perspective* on the decision to cross into the United States:

- What factors enter into the decision to cross the border illegally? to help people cross the border?
- What benefits (rewards) does the individual expect to gain? What costs (punishments) can they expect?
- What alternatives do they have to migrating to the United States?

4. Form small groups comprised of five students who have each completed a different reading. Each student should report the benefits and costs experienced by the Mexican he/she studied. Following the individual reports, have small groups summarize the impact of the presence of Mexican workers on the United States and on Mexico. What conclusions do students draw from analyzing these case studies? How does migration hurt each country? How does migration help each country?

5. As an evaluation activity, have students complete the cartoon analysis exercise on Handout M-10.

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A SNAPSHOT OF MEXICANS IN THE UNITED STATES

Mexican-Americans and Mexicans in the United States

People of Mexican heritage in the United States fall into several categories:

Native-born U.S. citizens. Many people of Mexican heritage can trace their family roots in the United States for several hundred years. Some point to the fact that their ancestors migrated into the present "Southwest" when it was part of Mexico, long before the United States took over in the mid-1800s.

Naturalized citizens. Many Mexicans complete the process for becoming a U.S. citizen as required by U.S. law. Recently, Mexicans who had lived in the United States for over five years took advantage of the amnesty offer in the 1986 immigration reform act; this offer provided for legal residence and the possibility of citizenship.

Commuters and legal residents. Many Mexicans have "green cards" that give them legal permission to work in the United States. Some cross daily to the United States to work as housekeepers and baby sitters and return to Mexico each night. Others come to complete seasonal agricultural work and return to Mexico in the winter.

Illegal immigrants and migrants. Noncitizens without green cards are called undocumented workers or illegal aliens. These workers often endure terrible working conditions and earn wages lower than the minimum wage. Because they are here illegally, they cannot complain. Migrants are people who plan to return. Immigrants are those who plan to stay.

A 1981 study of Mexican migration completed by a Mexican Select Commission offers the following profile of the illegal worker:

- 84 percent were male
- 77 percent were between the ages of 15 and 40
- completed an average of 4.9 years of schooling – above the national average
- 90 percent came from northern, arid states
- 75 percent traveled to California or Texas
- 77 percent found a job within two weeks

Mexican Attitudes Toward Illegal Migration to the United States

Some Mexican leaders find it embarrassing that hundreds of thousands of people must leave home to find work. Families who are separated for long periods bear many hardships. Yet Mexico receives important benefits. Not only can they celebrate an "informal reconquest" of land lost to the U.S. in the 19th century, the migration provides an important safety valve for the Mexican economy. Undocumented workers send an estimated one billion dollars in money and goods to family members in Mexico.

Source: Alan Riding, *Distant Neighbors: A Portrait of the Mexicans* (New York: Knopf, 1984).

U.S. Attitudes Toward Illegal Migration of Mexicans

Many Anglos (and some Hispanics) fear that the United States' traditional values, culture, and language are being subverted by new waves of migrants, approximately half of whom are Mexicans. While the social costs are hard to estimate, one study shows that migrant laborers are more likely to be both the victims of crime and the perpetrators of certain crimes than other residents. One concern is that illegality breeds illegality.

The benefits that come from the presence of Mexican laborers are integral to the U.S. economy. Many farms, restaurants, and construction sites depend on cheap Mexican labor to remain profitable. Prices of food and services would be higher if business passed higher costs on to the consumer.

MEXICAN IMMIGRATION AND U.S. POLICY

Patterns of migration from Mexico to the United States can be linked to expansion and contraction in the U.S. economy and to economic and political conditions in Mexico. Analyze the information in the timeline below, indicating periods of a "U.S. Pull" or a "Mexican Push" of Mexican people northward. Also look for points at which Mexican workers were "pushed" out of the U.S. through deportation.

1610 Spanish establish Santa Fe, the first city in what is now the United States.

1777 Spanish empire expands to include all of what is now Texas, New Mexico, Arizona, California, Nevada, Utah, and part of Colorado.

1821 Mexico becomes independent from Spain.

1836 Texas declares independence from Mexico.

1845 Texas requests annexation by the United States.

1848 The U.S. takes one-half of Mexico as terms of the Treaty of Guadelupe Hidalgo. Mexicans (approximately 70,000) have one year to accept citizenship in the United States or move south of the new border. Many Mexican land grants pass into Anglo hands in spite of treaty promises to honor the terms of those grants, most of which established the right of communal land ownership for the people who occupied the land under the Mexican regime.

1860s U.S. recruits Mexicans to build new railroad lines. Mexicans provide much of the labor for U.S. railroads. Railroads between Mexico and the United States make it easier to travel between jobs in the United States and pueblos where families remain.

1870s Economic expansion creates a demand for cheap labor. The United States recruits Mexicans to work in agriculture and mining. The policies of Mexican dictator Porfirio Diaz result in many Indian peasants losing their traditional communal land base.

1910s Beginning of a 20-year wave of migration. Unrest and revolution in Mexico and U.S. entry into World War II create a need for workers to replace soldiers bringing (by some estimates) 1/8 of the population of Mexico into the United States to work in mines, meat packing, canneries – some move as far north as Michigan.

1921 Immigrant quota laws limit European migration but allow Mexicans who paid a head tax to enter temporarily. Industrialists and farmers lobbied for Mexican labor because they were willing to work long hours for very low wages. Advertisements created to attract Mexicans to the "good life" in the United States.

1924 The United States establishes a Border Patrol but provides very little funding. Unlawful entry becomes a felony. Coyotes (people who help others cross the border illegally) emerge as a new entrepreneurial occupation.

1929 Mexico agrees to limit numbers of migrant workers. U.S. law makes it illegal to be an undocumented worker but not illegal to hire one.

1930s The Great Depression results in deportations and policies of exclusion. Mexicans (and some U.S. citizens of Mexican descent) who cannot produce proof of citizenship on the spot were deported.

1940s Farmers and industrialists recruit workers through the "Bracero Program." This agreement between the United States and Mexican governments brought 4.8 million workers to the United States over 22 years – primarily to work on farms and ranches. (Bracero means "arms" or Mexican worker.)

1954 An economic turndown and "McCarthyism atmosphere" result in "Operation Wetback" a crackdown against Mexican workers in which one million workers were sent back.

1964 Bracero Program ends, but the tradition of migrating to the United States continues. Number of illegal workers jumps from 44,000 to 870,000. By this time, families and pueblos throughout Mexico depend on the income earned in the United States.

1986 U.S. Immigration and Reform and Control Act of 1986 provides for legal residence (and possible U.S. citizenship) for 3 million illegal immigrants.

1991 INS estimates indicate illegal immigration is on the rise.

Summary of Current Law

Changes

1. Employer Sanctions: Civil penalty fines for knowingly hiring illegal aliens start at $500 per alien for a first offense. Employers can also receive criminal penalties for a "pattern or practice" of violations.

2. Amnesty: Aliens able to prove they have lived in the United States since before January 1, 1982, can apply for temporary resident status for a year; then permanent resident status for five years; then U.S. citizenship.

3. Agriculture: Illegal alien farm workers may similarly gain legal status if they worked in the United States at least 90 days in the year prior to May 1, 1986.

4. Aid: The federal government was to spend $1 billion per year for four years to reimburse state agencies for benefits given aliens if the need becomes apparent.

5. Identification: No national ID card is called for at this time. Employers are required to ask job applicants for documents proving either citizenship or resident alien status.

Unchanged

1. Ceiling: 270,000 immigrants with a maximum of 20,000 per country.

2. Preference Requirements: Professional job skills or moves that would reunite families makes an applicant more desirable than others.

3. Family Ties: Spouses, unmarried minor children, and parents of U.S. citizens are exempt from numerical quotas or preference requirements.

Source: *Population Today, 1986* (Washington, DC: Population Reference Bureau, 1986).

Analysis Questions:

How would you characterize U.S. attitudes over the years? Did U.S. citizens view Mexican workers differently in some periods than others? What caused their views to shift?

How has U.S. policy contributed to a tradition of Mexican migration?

Why did Mexicans continue to come to the U.S. after policy made it illegal in 1964?

What issues did the 1986 Immigration Reform Act attempt to solve?

What evidence is there that the current immigration law is not working? What evidence is there that U.S. employers and Mexican citizens have interests not served by the policy?

CASE STUDY ANALYSIS

1. Name _____
2. Citizenship status _____
3. Reasons for coming:

4. What rewards, satisfactions, benefits does this person receive from living in the United States?

5. What costs, risk are involved in being in the United States?

6. Does this person plan to stay in the United States permanently or return to Mexico? Why?

7. Analyze how the presence of this person in the United States affects each country. For example, does the U.S. have to pay to educate children of people who pay no taxes? Are they taking a job that a citizen would like to have? What happens to the money earned?

Costs/Benefits for the United States **Costs/Benefits for Mexico**

El Mexico
Coyote
Tijuana, Mexico

He is young, clean-cut with short hair, shiny cheeks, and a shyness about his manner that makes El Mexico an unlikely candidate for a coyote. He, his wife, and their six-year-old son live in a converted garage in the hills of Tijuana.

There is constant activity – playing children, nervous people reassuring each other and trying to rest before the night's crossing, and the comings and goings of the men organizing the evening's work. All visitors are offered refrescos or beer.

* * * * *

I first started bringing people across when I was about twelve or thirteen. At that time I lived on the other side in San Ysidro, [US]....Our house was right on the border, across from the schoolyard there, and I knew the area with my eyes closed. That's where we played when we were kids. So when I would see people crossing and know that they needed help or they would get caught, I would bring them across. I never charged anything. I guess people got to know me, other guides, and they would ask me to signal for them....

People want to cross with us because they know we are secure and we're serious. They know we are not like those who look for people off the street, or are looking for people to take their money, or those that take people across so they'll have money to drink. We are fathers, we have families to maintain, and our interest is to cross people. ...

Those who make good money are the ones who sell drugs. They make money coming and going. Besides all this, the little that one makes, and then the Mexican police want $100 if they catch you with one or two! We play the game on this side to avoid the police because when you're caught you have to pay $100 or $200 just so they will leave you alone. And think of it, there are the municipal police, the state police, the federales, the governors, and beyond that, those that pass for police. And they all have an interest. What can you do? You have no choice. Sometimes you have to pay them.

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Vidal Olivares
Truck Driver
Los Angeles, California

This is Vidal's house. The focus of life here is in the living room. Unending discussion, meals eaten day and night, children, laughter, and in the background, always the television. With his wife, Estela, their two young daughter, his cousin and his cousin's wife, his wife's sister, and seven young men from his pueblo, Vidal heads a household that is certainly not typically American and certainly won't be approved under the zoning laws.

But working for low wages in one of the most expensive areas of the country, and accustomed to large extended families, Vidal and his household have adapted a feature of Mexican society to survive in the United States. Each man contributes $160 a month to cover rent, utilities, and maintenance. The three women share in the cooking and cleaning. And rather than the chaos we would envision from the perspective of a family of four, the house is very neat and orderly. The joyful ambience, cooperative spirit, and sense of belonging make this home especially suited to children. For the little girls, there is always someone to play a game with, read a story, or sing a song and a free lap to sit on.

* * * * *

My origins are in a ranchito in the state of Jalisco, but I came to the United States in 1976. I have gone back three times. I had no trouble passing the first time, because I had a friend's green card. We look very much alike and he loaned me his papers, so I passed for him. At this time I was a bachelor. I stayed for two years, and when I returned to Mexico I met my wife and we married. But again, for economic reasons – I didn't have a job – I returned to work here.

My brother always wants me to come home. He can tell me that because he has work. He's a truck driver for a big company there and makes good money. That's why he doesn't have any interest in coming here....I wrote and asked my wife if she would come. I had a friend, a woman who said she would help me. I paid her; it wasn't free. She picked my wife and the baby up in Tijuana in a pickup. It was very easy. The only think was, she charged me quite a bit, $500 for both of them....

Now I have about five years here. When my mother died in December, I returned again, but I stayed only one week. Now I have my family here, and then I can't leave my work. But it was easy to pass this time. Four times I have passed, and not once have I landed in jail. I know the *migra*, but only from a distance.

Not long ago, my boss suggested that I try to get my papers because I travel, driving a big truck all over California and Arizona. So I went to an attorney, and when he asked me about my daughter and my work, he told me not to try to get my papers. In this class of work, they don't give green cards. There really isn't any problem, except the fear one has at times. I have seen the patrols. I am very careful, but because it's a big truck, they have never stopped me. But yes, I am a bit fearful that one day they will....

When one is married and has his family here, he hardly has time to think of his family there; rather, he thinks of his children, his wife, and his responsibilities. He tries to learn to learn how to live here....Thanks be to God, I have never had any bad experiences here. The American people have treated me well.

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Don Benjamin Real
Billiard Parlor Owner
San Juan, Mexico

Around ten o'clock each morning Don Benjamin Real swings back the double doors to the old adobe part of his three-room house, revealing four billiard tables in the large, dim space. He switches on the fluorescent tubes that hang over each table and the village vagos begin to drift in. Soon each table is occupied; the players, all young, are laughing and chiding. A young boy sells beer, soft drinks, and snacks from behind the bar.

Don Benjamin takes his place with the older men, watching, nursing beers, and talking with one another. At 74, he wears two days of white beard with grace, and speaks with a formality and courtesy that is slipping away from pueblo life as television and work on the outside become the norm.

* * * * *

The last time I went was the day of the Fiesta of Independence, 11 years ago. I was drinking during the fiesta and discharged my pistol. I thought I was only shooting into the sky, but one of the bullets hit Don Justino in the leg. He was coming up the street a block away, down there by Simon's house. It was an accident, but the only honorable thing to do was to pay his hospital bill, and well, I didn't have the money. So the next day I left for the United States.

Five months later when I returned to the pueblo I paid Don Justino's expenses and still had a little left. That's when I started the billiards. My son had bought a table when he returned from the United States. Since then we've added the other three.

I have been to the United States to work eight times. Five of my eleven children are there. My four sons have lived there a long time. They're established. I don't think they'll every come back to live in the pueblo.

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Juana Maria Cadena Torres
Maid
Austin, Texas

September 9, 1989 is Juana's fourth anniversary of coming to Texas. It's a beautiful Saturday afternoon. Usually her Saturdays are booked, not at her regular job, but she is sought after to make steamers full of tamales or handmade tortillas for parties, or to care for someone sick, or to babysit so parents can have a weekend respite. But today is special. Juana is free—a day with friends.

* * * * *

After I was here one week I got a job, and in two days I earned $80. The señora told me, "If I see you are a good worker I will raise your salary, but if I see you are lazy then I won't give you a raise." Ayeeeee. I began cleaning. Cleaning, cleaning, cleaning.

It's [laundry] very different, because we don't have machines, all we have is a rock to wash in the river. I like it because you don't have to carry the clothes all the way down to the river. Everything is right there; you don't even have to go outside to hang up your clothes. You can wash even when it's cold and rainy. In Mexico we cook over wood, but I sent money with my sister to buy my mother a stove and a tank of gas. She still prefers to use wood, because she says the gas is dangerous. I want to build a house for her just like the ones here, with a bathroom, kitchen and all. I sent 1,000,000 pesos with my sister the last time she was here to build a kitchen.

I was born in Rio Verde in San Luis Potose. There are nine children in my family, and with my mama and papa there are eleven. I'm the seventh child....I told my parents, "I am going to leave. If God helps me I will cross over to the United States, and get work quickly." And thanks be to God I crossed and arrived with no problem. Since I was fifteen years old I had heard from people in Rio Verde who had returned, "The United States is very beautiful."

I told my mother, "I want to go. Before the day I die I want to see places outside of Mexico." So I came. I liked it a lot in Rio Verde working with my sisters. But I am very happy working here. I earn more in a week than sister, the teacher, earns in two weeks. Every four months my sister comes to visit me. She has a passport. She brings all kinds of things: tamales, cheeses, chorizo....without the chorizo and the Mexico cheese, the enchiladas will never taste the same.

How can I tell you? Someone here lives much better than in Mexico. There, if you don't have a career, they don't have work for you. If you haven't graduated from secondary school, there is no work. But here, none of that matters. We come, they hire us anyway.

Also, many people here give me clothes. I give them to my sister to take to the people who don't have clothes. I sent $10 to a woman who didn't have the money to buy books for her children, and my sister and I are helping two other children there. One is a little girl. She is only nine years old, but she wants to be a teacher. I told her I would help her if she wants to study hard.

I love sports, especially futbol. Sometimes I pay for a taxi just to go look for a futbol magazine called El Balon. I have been watching futbol since I was five years old. Aye, if I could only be a man so I could play. I collect the posters and postcards and all kinds of futbol things. This is the reason I would go back to Mexico, because we don't have Mexican futbol here. I miss it.

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Mary Margaret Navar
Communications and Marketing Consultant
Austin, Texas

You can almost guess Mary Margaret's story upon meeting her. In 105 degrees of humid Texas heat she is completely cool.

* * * * *

My father and his family came from Durango, Mexico, from Parral and Corrales. My great-grandfather owned land in that area...Somehow my great-grandfather did not see eye to eye with Pancho Villa. They exchanged threats on many occasions....Pancho Villa was becoming very popular, so my great-grandfather decided to head north with all his family.

They wanted to get back to Spain. That was their dream. A priest in the state of Durango agreed to take them, but they weren't able to bring anything, just a single chest filled with everything they could. They grabbed the children, and with that one chest got on the trail heading north....They finally made it to El Paso and the priest gets sick and dies. There they are, penniless.

My grandfather, a young man at the time and already married to my grandmother, decided to buy a cow, a milking cow to feed the family. Well after feeding the family he found there was milk left over. So he started to put it in bottles and sell it. When they got a little more money coming in they bought a second cow and eventually built up a whole herd and a little dairy....They struggled for years....

My mother's side really didn't immigrate. They were already in New Mexico, the precursors to what became that part of the United States. There was always this perspective that they were not Mexican. They considered themselves Hispanic...

It turned out that my best friend from high school wanted to go to Austin to do architecture school. So I said, "Well I'm coming with you. I'm going to study languages and culture." That's what I did....My mother did not want me to leave El Paso. She fought hard. I was her baby....At that time there were very few Chicanos at this campus, probably like 3 percent. So I didn't have a lot of people to relate to who were Chicano. But I hooked up with some people and just kind of made friends across the spectrum. I acclimated very well.

I also became aware of another reality. The activities in the Chicano community were very pro Pancho Villa and pro agrarian reform. But I came from a family of land bearers who were the enemy of Pancho Villa. So I pulled back. I rarely confessed that I came from a land-holding family...In many ways I agreed with the struggle, yet my family had struggled, too...Later I realized that there are as many Hispanic, Mexican, Chicano experiences as there are realities, and mine was just one example of millions that exist.

Austin opened up a lot of options for me that I never knew existed....From there I went to Washington as a fellow for the National Endowment for the Arts, the folk art program....Back in Austin I was able to give technical assistance to groups who needed to know what Washington wanted to see. I went into business, into membership development and public relations for the Hispanic Chamber of Commerce.

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CARTOONISTS LOOK AT IMMIGRATION

Choose one of the cartoons below to analyze. Use the questions that follow to guide your analysis.

NOW HEAR THIS ALL YOU ILLEGAL ALIENS!! YOU'RE IN FOR A HEAP OF TROUBLE. YES SIRREEE!
UNITED STATES OF AMERICA
PLEASE KNOCK BEFORE ENTERING!

BEST COPY AVAILABLE

1. What symbols are used in the cartoon? What does each symbol represent?

2. What do you think the cartoonist is trying to say? Do you agree or disagree with this point? Explain your answer.

3. Do you think a Mexican would view this cartoon differently than you do? Why or why not?

4. What, if anything, does the cartoon illustrate about the pushes and pulls affecting illegal immigration?

5. Draw your own cartoon showing what would need to happen for Mexicans to lose interest in coming to the United States.

5 THE BALLAD OF GREGORIO CORTEZ: CULTURAL CONFLICT THROUGH SONG

Introduction:

One of the ways Mexicans and American citizens of Mexican descent have reported their experiences with the U.S. legal system is through ballads or *corridos*. This lesson asks students to analyze a *corrido* that celebrates the heroism of Mexicans who have defended their "rights" against U.S. law enforcement to explain some of the causes of Hispanic/Anglo cultural conflict.

Objectives: At the end of this lesson, students will be able to:

1. Analyze a *corrido* to learn about Mexican perceptions of and experiences with the U.S. legal system.

2. Describe some of the social and legal issues that have created cultural rivalry and conflicts between Anglos and Mexican visitors and immigrants.

Time: 1-2 class periods

Materials: Copies of Handouts M-11, M-12, and M-13 for all students; video (optional) of *The Ballad of Gregorio Cortez* distributed by Embassy Home Entertainment, 1901 Avenue of the Stars, Los Angeles, CA 90067 (VHS 2062 Drama) but available at many video stores. Locate two clips from the film described in **Procedure** so they can be quickly cued up in class.

Procedure:

1. Briefly discuss the role that ballads play in American culture. Students will probably be familiar with Davy Crockett as an American hero of cultural conflict popularized through song. Explain that Mexican immigrants have used a similar ballad form (the *corrido*) to describe their experience and their heroes on the "U.S. frontier." Explain that the most famous of the Mexican heroes popularized through song is Gregorio Cortez. Provide students with an historical perspective on this Mexican cultural hero using Handout M-11.

2. Pass out Handout M-12, and read the *corrido* with students. You may want to point out that this is just one of many versions of the *corrido*. Some have been written to rhyme in English; this version has been more directly translated. Discuss the following questions with the class: To whom was Cortez a hero? What did Mexicans admire about him? Based on the background information, what information about Cortez is emphasized in the *corrido*? What is left out? Do the Mexicans feel that the U.S. system provides justice for Mexicans?

3. If using the movie, *The Ballad of Gregorio Cortez*, show at least two clips: the incident that resulted in Cortez killing Sheriff Morris and a segment of the trial that follows. Prepare students to carefully listen for the misunderstanding that occurs when Sheriff Morris' deputy incorrectly translates Cortez' comments for the sheriff. Structure a viewing assignment with selected items from the viewing guide on Handout M-13.

4. To conclude the lesson, have students compare song, history, and film. How are they similar or different in their presentation of Gregorio Cortez as a hero? How is Gregorio Cortez similar to or different from Davy Crockett as a hero?

BACKGROUND INFORMATION ON GREGORIO CORTEZ

Gregorio Cortez was 12 years old when he emigrated to Texas in 1887. He lived with his brother, who had been in the United States for several years. At age 15 or 16, Gregorio married Leonor Diaz. By 1901, he had four children and was farming with his brother in Karnes County. The two had a good crop and were looking forward to their first harvest.

On June 13, 1901, Sheriff W.T. Brock Morris came to the Cortez home looking for a Mexican who had stolen a horse. A deputy translated as Morris asked Cortez and his brother questions. Because the deputy wrongly translated one of the answers, the sheriff mistakenly thought Cortez was defying his authority. Sheriff Morris ordered his men to arrest the Cortez brothers. In the ensuing fight, Morris shot and killed Gregorio's brother; Gregorio killed the sheriff in retaliation.

Cortez fled, trying to escape to Mexico. On June 16, he killed Sheriff Glover, leader of a posse trying to apprehend him. Finally, a man named Jesus Gonzales tipped the Texas Rangers to where Cortez was hiding and he was arrested.

The *San Antonio Express* described Cortez as "tall, slender, and lithe, with the lean muscular appearance of one who has passed through a trying ordeal. His shoulders are slightly stooped. His hands and feet are small and well shaped. His head is large and of good shape. It is covered with hair, of which any society 'exquisite' might be envious – black as night and tumbling with black curls all over his head...he was easy in his manner and showed no embarrassment...it was apparent that Cortez understood English, and later demonstrated that he could speak it...he cooly proceeded to give the officers a detailed statement." Dignified and self-confident, he remained unshaken "even before the majesty of the law." The paper also reported that "he possessed remarkable powers of endurance and skill in eluding pursuit."

In his first trial, a jury found that Cortez had killed Sheriff Morris in self-defense. In a second trial, Cortez was given a life sentence in prison for killing Sheriff Glover.

Cortez's wife Leonor, who had been jailed upon her husband's arrest, stayed in the area with her children. She could not afford to move elsewhere. She fed her children by doing laundry for families, many of whom hated her husband and hoped to see him hang.

Governor Oscar B. Colquitt pardoned Cortez in 1913. Upon receiving his freedom, Cortez moved to Nuevo Laredo and fought against the Mexican Revolutionaries. After being wounded in a skirmish against a revolutionary band, he returned to Texas to recuperate. He died in 1916 at the age of 41.

El Corrido de Gregorio Cortez, written before his pardon, was handed down and rewritten over time.

Discussion Questions

1. Describe the initial crime and the cultural conflict that led Cortez to shoot Sheriff Morris.

2. What kind of person was Gregorio Cortez? How do you think his personality entered into his treatment in the justice system?

3. Did Cortez receive fair treatment in the justice system? How do the Anglo and Mexican communities see the problem differently?

4. What do you know about Cortez from this reading that would contribute to his status as a folk hero?

EL CORRIDO DE GREGORIO CORTEZ

1
En el condado de Carnes
miren lo que ha sucedido,
murió el Cherife Mayor
quedando Román herido.

In the county of Karnes,
Look what has happened;
The Major sheriff died,
Leaving Román badly wounded.

2
Serían las dos de la tarde
cuando la gente llegó,
unos a los otros dicen:
– No saben quién lo mató.

It must have been two in the afternoon
When people arrived;
They said to one another,
"It is not known who killed him."

3
Se anduvieron informando
como media hora después,
supieron que el malhechor
era Gregorio Cortez

They went around asking questions
About half an hour afterward,
They found that the wrongdoer
Had been Gregorio Cortez.

4
Ya insortaron a Cortez
por toditito el estado,
que vivo o muerto se aprehenda
porque a varios ha matado.

Now they have outlawed Cortez,
Throughout the whole state;
Let him be taken, dead or alive;
He has killed several men.

5
Decía Gregorio Cortez
con su pistola en la mano:
– No siento haberlo matado,
lo que siento es a mi hermano.

Then said Gregorio Cortez,
With his pistol in his hand,
"I don't regret that I killed him;
I regret my brother's death."

6
Decía Gregorio Cortez
con su alma muy encendida:
– No siento haberlo matado,
la defensa es permitida.

Then said Gregorio Cortez,
And his soul was all aflame,
"I don't regret that I killed him;
A man must defend himself."

7
Venían los americanos
más blancos que una paloma,
de miedo que le tenían
a Cortez y a su pistola.

The Americans were coming,
They were whiter than a dove,
From the fear that they had
Of Cortez and of his pistol.

8
Decían los americanos,
decían con timidez:
– Vamos a sequir la huella
que el malhechor es Cortez.

Then the Americans said,
Then they said fearfully,
"Come, let us follow the trail;
The wrongdoer is Cortez."

9
Le echaron los perros jaunes
pa' que siguieran la huella,
pero alcanzar a Cortez
era seguir a una estrella.

They set the bloodhounds on him,
So they could follow his trail,
But trying to overtake Cortez
Was like following a star.

10
Tiró con rumbo a Gonzales
sin ninguna timidez:
–Síganme rinches cobardes,
yo soy Gregorio Cortez.

He struck out for Gonzales
Without showing any fear,
"Follow me, cowardly rangers,
I am Gregorio Cortez."

11
Se fué de Belmont al rancho,
lo alcanzaron a rodear,
poquitos más de trescientos,
y allí les brincó el corral.

From Belmont he went to the ranch,
They succeeded in surrounding him,
Quite a few more than three hundred,
But there he jumped their corral.

12
Cuando les brincó el corral,
según lo que aquí se dice,
se agarraron a balazos
y les mató otro cherife.

When he jumped their corral,
According to what we hear,
They got into a gunfight,
And he killed them another sheriff.

13
Decía Gregorio Cortez
con su pistola en la mano:
–No corran, rinches cobardes,
con un solo mexicano.

Then said Gregorio Cortez,
With his pistol in his hand,
"Don't run, you cowardly rangers,
From just one Mexican."

14
Salió Gregorio Cortez,
salió con rumbo a Laredo,
no lo quisieron seguir
porque le tuvieron miedo.

Gregorio Cortez went out,
He went toward Laredo
They decided not to follow
Because they were afraid of him.

15
Decía Gregorio Cortez:
–¿Pa' qué se valen de planes?
No me pueden agarrar
ni con esos perros juanes.

Then said Gregorio Cortez,
"What is the use of your scheming?
You cannot catch me,
Even with those bloodhounds."

16
Decían los americanos
–Si lo alcanzamos ¿qué haremos?
Si le entramos por derecho
muy poquitos volveremos.

Then the Americans said,
"If we catch up with him, what shall we do?
If we fight him man to man,
Very few of us will return."

17
Allá por El Encinal
según lo que aquí se dice,
le formaron un corral
y les mató otro chirife.

Over by El Encinal,
According to what we hear,
They made him a corral,
And he killed them another sheriff.

18
Decía Gregorio Cortez
echando muchos balazos:
– Me he escapado de aguaceros,
contimás de nublinazos.

Then said Gregorio Cortez,
Shooting out a lot of bullets,
"I have weathered thunderstorms;
This little mist doesn't bother me."

19
Ya se encontró a un mexicano,
le dice con altivez:
– Platícame qué hay de nuevo,
yo soy Gregorio Cortez.

Now he has met a Mexican;
He said to him haughtily,
"Tell me the news;
I am Gregorio Cortez."

20
– Dicen que por culpa mía
han matado mucha gente,
ya me voy a presentar
porque eso no es conveniente.

"It is said that because of me
Many people have been killed;
I will surrender now
Because such things are not right."

21
Cortez le dice a Jesús:
– Ora sí lo vas a ver,
anda diles a los rinches
que ve vengan a aprehender.

Cortez says to Jesús,
"At last you are going to see it;
Go tell the rangers
To come and arrest me."

22
Venían todos los rinches,
venían que hasta volaban
porque se iban a ganar
los mil pesos que les daban.

All the rangers were coming,
Coming so fast they even flew,
For they wanted to get
The thousand dollars they were offered.

23
Cuando rodearon la casa
Cortez se les presentó:
– Por la buena sí me llevan
porque de otro modo no.

When they surrounded the house,
Cortez suddenly appeared before them,
"You will take me if I'm willing,
But not any other way."

24
Decía el Cherife Mayor
como queriendo llorar:
– Cortez entrega tus armas,
no te vamos a matar.

Then the Major Sheriff said,
As if he was going to cry,
"Cortez, hand over your weapons
We are not going to kill you."

25
Decía Gregorio Cortez,
les gritaba en alta voz:
– Mis armas no las entrego
hasta estar en calaboz'.

Then said Gregorio Cortez,
Shouting to them in a loud voice,
"I won't surrender my arms
Until I am in a cell."

26
Decí Gregorio Cortez,
decía en su voz divina,
– Mis armas no las entrego
hasta estar en bartolina.

Then said Gregorio Cortez,
He said in his godly voice,
"I won't surrender my arms
Until I'm inside a jail."

27

Ya agarraron a Cortez,
ya terminó la cuestión,
la pobre de su familia
lo lleva en el corazón.

Now they have taken Cortez,
Now matters are at an end:
His poor family
Are suffering in their hearts.

28

Ya con ésta me despido
a la sombra de un ciprés,
aquí se acaba cantando
el corrido de Cortez.

Now with this I say farewell,
In the shade of a cypress tree;
This is the end of the singing
Of the ballad of Cortez.

FILM VIEWING GUIDE
BALLAD OF GREGORIO CORTEZ

1. As you view the film, what evidence do you see of Anglo stereotypes about Mexicans? What evidence of Mexican stereotypes about the Texas Rangers? What evidence is there that the Anglos and Mexicans distrust each other? What stereotypes contributed to this mistrust? What risks were taken by people who did not subscribe to the stereotypes? Without stereotypes, how might the incident have turned out differently?

2. Compare the movie with the "historical Cortez" and the ballad version. How are the sources contradictory? complementary?

3. Prepare reports on the conflict from the viewpoints of Anglo and Hispanic newspapers.

4. Take one of the primary characters of the courtroom and describe what takes place from his/her point of view. Compare the judicial process with a modern courtroom. How is the Cortez trial similar to or different from what might happen today?

5. Take the role of one of the men chasing Gregorio and explain his sentiments. Why were you chasing him? How do you justify your actions? Do similar questions of justice arise today? What responsibility does a police force have for tempering emotions and stereotypes that officers may have?

6 CONTROVERSY ON A COLORADO MOUNTAIN

Introduction:

This lesson is designed to help students understand how problems can arise when differing legal systems of land ownership collide. Students learn about the purpose and procedures for making land grants, how land grant claims were settled, and the problems remaining from a long history of litigation. They then participate in a mediation exercise related to a contemporary dispute over use rights on a Colorado mountain. It is significant that this dispute involves people who have lived on the same land for many years (i.e., they are not recent immigrants).

Objectives: At the end of this lesson, students will be able to:

1. Describe the purpose and nature of land grants made by the Spanish and Mexican governments.

2. Compare Mexican and American systems of land ownership.

3. Analyze how contrasting systems can create problems of fairness when deciding legal title to land.

4. Analyze issues related to a contemporary land grant problem.

Time: 3-4 class periods

Materials: Copies of Handouts M-14, M-15, M-16, and M-17 for all students (Handout M-15 is optional); enough copies of Handouts M-18, M-19, and M-20 for one-third of the class to have each.

Procedure:

1. Introduce the lesson by asking the class to brainstorm a list of reasons why land ownership is important. Record their responses on the board. Decide which of the ideas listed most reflect our attitudes today and which might reflect attitudes 100 years ago.

2. Distribute Handout M-14. Allow students time to read the sections "The Purpose of Land Grants" and "Types of Land Grants." Begin to develop a vocabulary list of the words or concepts students find most difficult to understand; define the terms. Discuss the general content of the material.

3. (Optional) Divide the class into groups of three. Distribute Handout M-15. Allow time for students to plan a fair system of land distribution on their land grant as directed on the handout. After groups have finished, ask them to share their plans with the rest of the class. Ask the class to think of fair ways of settling disputes arising from ownership, use, and transfer of lands among persons living on the grant. Ask them to think about what might happen if, suddenly, their land became part of another country with differing ideas about ownership and transfer of land.

4. Allow the class to finish reading Handout M-14, this time concentrating on the section "Land Grants and the Treaty of Guadalupe Hidalgo." Continue to develop vocabulary as needed. Divide the

class into small groups to answer the questions in the "What Do You Think?" section of the material. Discuss their responses as a class.

5. Distribute Handout M-16. Again, allow time for students to read the background material and develop a vocabulary list. Ask the class to develop a flowchart illustrating the procedure for settling a claim submitted to the court. Discuss the questions in the "What Do You Think?" section of the material. (**Note:** Students could read the handout and prepare the flowchart as homework.)

6. Distribute Handout M-17. Allow students time to read the material. Define terms as necessary. Discuss the general content of the material and the questions in the "What Do You Think?" section. In discussing the last question, ask students to recall common disputes at school or in their neighborhood and how those disputes were resolved.

7. Introduce mediation using the **Teacher Background Information**. Outline the mediation process on the board. Explain to the class that they will be experiencing the process by participating in a role play activity. You may further want to explain that experienced mediators receive hours of training and that this activity can only illustrate some of the key points in the process.

8. Divide the class into groups of six students. In each group, assign two mediators, two students to represent the Land Rights Council, and two students to represent Zachary Taylor. Each mediator should be assigned to one disputant in the case. Mediators should receive their instructions from Handout M-18; disputants should receive their instructions from Handouts M-19 and M-20. Allow time for the students to plan their roles. Mediators should not have access to the instructions for the disputants. They should hear the facts from the parties themselves.

9. Remind students of the procedures for mediation outlined on the board. Have the students begin with the introductions and the opening session. Although it may compromise the process, you may find it desirable to set time limitations on the sessions. Seven to ten minutes should be sufficient for introductions and the opening session.

10. After the opening session, have the mediators meet to discuss what the parties have said and to plan future strategy. At this time they may want to have private meetings with the disputants. If time limitations are imposed, five to seven minutes should be adequate for this phase.

11. Following the recess and caucus, have the students conduct another full session. Another recess and caucus may be necessary. You may repeat the process until a compromise is reached and an agreement written.

12. Debrief the lesson by discussing the following questions:

- What was the outcome of the mediation in each group?
- Are the parties generally satisfied with the written agreement? Why?
- Do you think mediation is a good way to resolve conflicts complicated by different cultural and legal traditions?

Simplified mediation: As an alternative to the lengthier mediation process, you may divide the class into three groups, each with the same number of students. Assign one group the role of mediators, the second group represents the Land Rights Council, the third group represents Zachary Taylor. Allow time for students in each group to meet and to prepare their roles.

During the second phase, students are assigned to triads: one mediator, one member of the Land Rights Council, and Zachary Taylor. The mediator will help the disputing parties mutually resolve the conflict. All students in the class will be working in triads simultaneously. Allow time for the triads to

develop a solution (or no solution, if they cannot agree). Eliminate the breaks and separate caucus sessions.

13. You may want to share with students what has happened in the actual case recently. In June of 1991, about a month before arguments were to be heard in the appeals court, the Land Rights Council decided to try negotiating with the Taylor family. They offered to drop the lawsuit if the Taylor family sold the disputed land to a buyer who would restore some or all of the traditional rights on the land. However, no agreement was reached, and on December 5, 1991, the Court of Appeals issued a ruling upholding the District Court's action in dismissing the Land Rights Council's suit.

Teacher Background Information:*

Mediation is a process that helps people resolve disputes and conflicts. The mediation process involves *complainants*, respondents, and mediators. The complainant has a complaint. The *respondent* is the person the complainant is upset about. The role of the *mediator* is to help promote agreement among the parties to settle the dispute.

The purpose of mediation is not to decide guilt or innocence. It is not about punishment or revenge. Mediation is to help the disputing parties get to the root of a problem and find their own solution. Mediators have no authority over the parties. They can neither force them to mediate nor to reach an agreement. Mediators help the parties see opportunities for compromise to successfully resolve the dispute. After a mediation, there are neither winners nor losers but, hopefully, satisfied individuals who have resolved their problem.

Like mediation, taking a dispute to court involves a third party. Beyond that, the similarities are few. The chart below illustrates the difference between mediation and a trial.

Trials	Mediation
1. The dispute is framed in law, criminal or civil.	1. The parties involved define the dispute.
2. Due process is observed, including attorneys and rules of evidence.	2. The parties speak for themselves. No rules of evidence are imposed.
3. Trials look to the past to discover the facts.	3. Emphasis is on future behavior of the parties.
4. A judge or jury decides the facts and determines guilt or innocence.	4. The parties themselves decide how to settle the problem.
5. The court enforces its decision.	5. The parties take action to see agreements honored.

Unlike costly trials, mediation is affordable. In some cases the services of a mediator are free, but usually a small fee is charged. Court dockets are jammed, causing long delays. Mediation cases are heard in a short time following the dispute. Sessions are held in an informal setting and may be in the evenings or on weekends. They are held in private, whereas trials are open to the public. Mediation makes the parties active participants in resolving the dispute. In court, the third party imposes a decision.

Source: Albie Davis, *Mediation: An Alternative That Works* (Salem, MA: District Court Department, Trial Courts of Massachusetts, 1983).

As a general rule, mediation cases involve parties who have some type of ongoing relationship:

- Families. This might include disputes between husband and wife or children and parents.
- Neighbors. Mediation can be effective in resolving disputes between people living near each other.
- Friends. Disputes between friends can focus on such things as borrowed but unreturned items and unkept promises.
- Landlord/tenant. Disputes about rent, maintenance, and noise levels are common.
- Consumer/merchant. Disputes among consumers and merchants include goods that do not work properly, payments not made, or poorly performed services.
- Teacher/student. Mediation can be used to resolve problems that might lead to truancy or suspension.

Generally, two mediators work on a case as a team. The mediators meet before the session to learn the names of the parties and the type of complaint to be mediated. They decide who will make the introductions and who will explain the process and guidelines to the parties. Mediators have little information about the case. There are six basic stages in mediation.

- **Introductions.** The mediators introduce themselves and explain the mediation process and the guidelines for participating. They explain that mediation is voluntary and that the role of the mediator is to be a neutral third party. The mediators assure the parties that the session will be held in confidence and that the parties will have as much time as they need to work out a solution.
- **Opening session.** With all the parties present, both parties are given an opportunity to explain their side of the case, including their feelings and thoughts. The mediators try to get a general sense of how each party would like to see the dispute resolved.
- **Recess.** A recess is declared after each full session to give mediators a chance to review information, sort out issues, and plan the next session.
- **Private sessions.** Mediators hold private sessions with each of the parties. The mediators try to find out if the party has anything to add. They try to understand the important issues for the party and possible terms for a settlement. Private sessions are followed by additional full sessions and private meetings as necessary.
- **Settlement.** Using the information gathered during the sessions, the mediators begin to guide the parties toward resolving the dispute. They help the parties to identify their interests and to generate ideas for settlement. They test out ideas by getting responses to offers made by either side. They try to eliminate extreme positions by reminding the parties of the benefits of ending the conflict.
- **Written agreement.** The mediators draft an agreement based on the terms set out by the parties. The agreement is signed by all parties, including the mediators. Any notes taken during the mediation are destroyed in the presence of the parties.

SPANISH AND MEXICAN LAND GRANTS IN THE SOUTHWEST

Purpose of Land Grants

Offering free land was one way to stimulate settlement on new frontiers. Free land encouraged settlement in remote areas threatened by invasion from other countries. Gifts of land were also used as rewards for services performed for one's government.

Spain ruled what is today the southwestern United States between 1598 and 1821. To protect this remote region of its empire, the crown encouraged people to settle there. Spanish policy was to give settlers free land from the *public domain*, that is, land owned by the government.

The Law of the Indies was the Spanish law in the New World. It was a special code of laws that applied only to Spain's colonies. The Law of the Indies set the rules for granting land to individuals or groups. The Republic of Mexico basically followed the same rules when it governed the Southwest between 1821 and 1848. The Mexican Congress passed the first colonization law in 1824. This law invited persons from any country to settle in the Southwest and allowed grants as large as eleven square leagues (one square league = nine square miles). Mexico passed another law in 1828 authorizing certain government officials to grant land from the public domain. The law also set important requirements for settling and farming the land.

Types of Land Grants

The Law of the Indies and Mexican law recognized three types of land grants:

Community Grants gave land to groups of settlers who wished to start a new town. Each settler received a home site and irrigated land. Settlers had to live on their lots for ten years. The law required them jointly to erect a wall or to dig a ditch around the settlement to protect against Indian attacks. The grant included a large area of common lands for all settlers to graze their herds and to gather firewood. No one person owned the common land, but all had the right to use it and all agreed to care for it.

Private Grants gave land to individuals who promised to find settlers, distribute homesites and farmland, and construct defenses, irrigation canals, and a church. The laws on private grants were less detailed. They required the grantee to respect the property rights of the Indians already occupying the land. Any minerals or mines on the land remained the property of the government. If a grantee did not meet the requirements of the grant, the land returned to the government.

Pueblo Indian Grants gave the Indians title to the lands they occupied or used. The basis for Pueblo land grants came from a royal decree of 1687. The king allowed the Pueblos to claim four square leagues of land, measured from the church. During the Mexican period, the Pueblo Indians became citizens of Mexico. As citizens, they could sell their land, but few, if any, actually did.

From the beginning, one of the problems of the Spanish and Mexican land grants was that their boundaries were unclear. Boundaries followed landmarks, such as a hill, a stream, or a rock. Sometimes the descriptions just said, "east of the Martinez property." Such unclear boundaries led to frequent disputes over ownership of land.

Land Grants and the Treaty of Guadalupe Hidalgo (Wah-dah-lóo-pay Ee-dáhl-go)

The Treaty of Guadalupe Hidalgo in 1848 ended the war between Mexico and the United States. A *treaty* is an agreement between two or more nations. The *law of nations* (customary law that applies to relationships between countries) makes agreements in a treaty binding on the parties. The Treaty of Guadalupe Hidalgo transferred ownership of northern Mexico to the United States. This territory included what is now California, Nevada, and Utah, and parts of Arizona, Wyoming, Colorado, and New Mexico. By terms of the treaty, Mexico received $15 million for the land. The treaty was important because the United States agreed to grant citizenship to the people living in the Southwest and to honor their rights to liberty and property.

Treaty of Guadalupe Hidalgo

Article 8. Mexicans now established in territories...shall be free to continue where they now reside...retaining the property which they possess....

Article 9. The Mexicans...shall be incorporated into the union of the United States...to the enjoyment of all the rights of citizens of the United States...[and] shall be maintained and protected in the free enjoyment of their liberty and property....

When the U.S. Senate approved the treaty, it struck out Article 10. This article said that land grants would remain valid if they were valid under Mexican law. The article provided a fair process to confirm

land grant claims. The Mexican Congress, when it ratified the treaty, attached a document, called a *protocol*, replacing Article 10. Whether the protocol became part of the treaty is not clear. It was never ratified by the Senate. The president advised the Senate that it was not necessary to ratify the protocol.

Protocol of the Treaty of Guadalupe Hidalgo

Article 2. The American Government by suppressing the 10th Article of the Treaty of Guadalupe, did not in any way intend to annul the grants of land made by Mexico....These grants...preserve the legal value which they may possess, and the grantees may cause their legitimate titles to be acknowledged before the American tribunals.... legitimate titles to every description of property, personal and real, existing in the ceded territories are those which were legitimate titles under the Mexican law....

Like the Constitution, treaties made by the United States become the supreme law of the land. The actions of the government or other laws made by Congress may not violate the provisions of a treaty.

The problem facing the U.S. government and the people in the ceded territory was to determine which land was the property of individual citizens and which was part of the public domain. Some scholars of this period say the United States expected to get most of the land it was paying for.

What Do You Think?

1. What issues of fairness might arise from the policy of using land to promote settlement and to reward people for their services?

2. What are the benefits of using land grants to promote settlement? Find examples that show how the U.S. government used land to encourage settlement on the frontier.

3. What problems might arise from the policy of using land to promote settlement?

4. What might have been fair or unfair about the Treaty of Guadalupe Hidalgo and the Protocol to the treaty?

PLANNING TO SETTLE A LAND GRANT

The governor of the territory has awarded you a 70,000-acre grant of land. When you asked the government for the land, you stated that you wanted to establish towns, farm, and raise cattle and sheep. You also stated that the first group of settlers would include yourself and 58 other families.

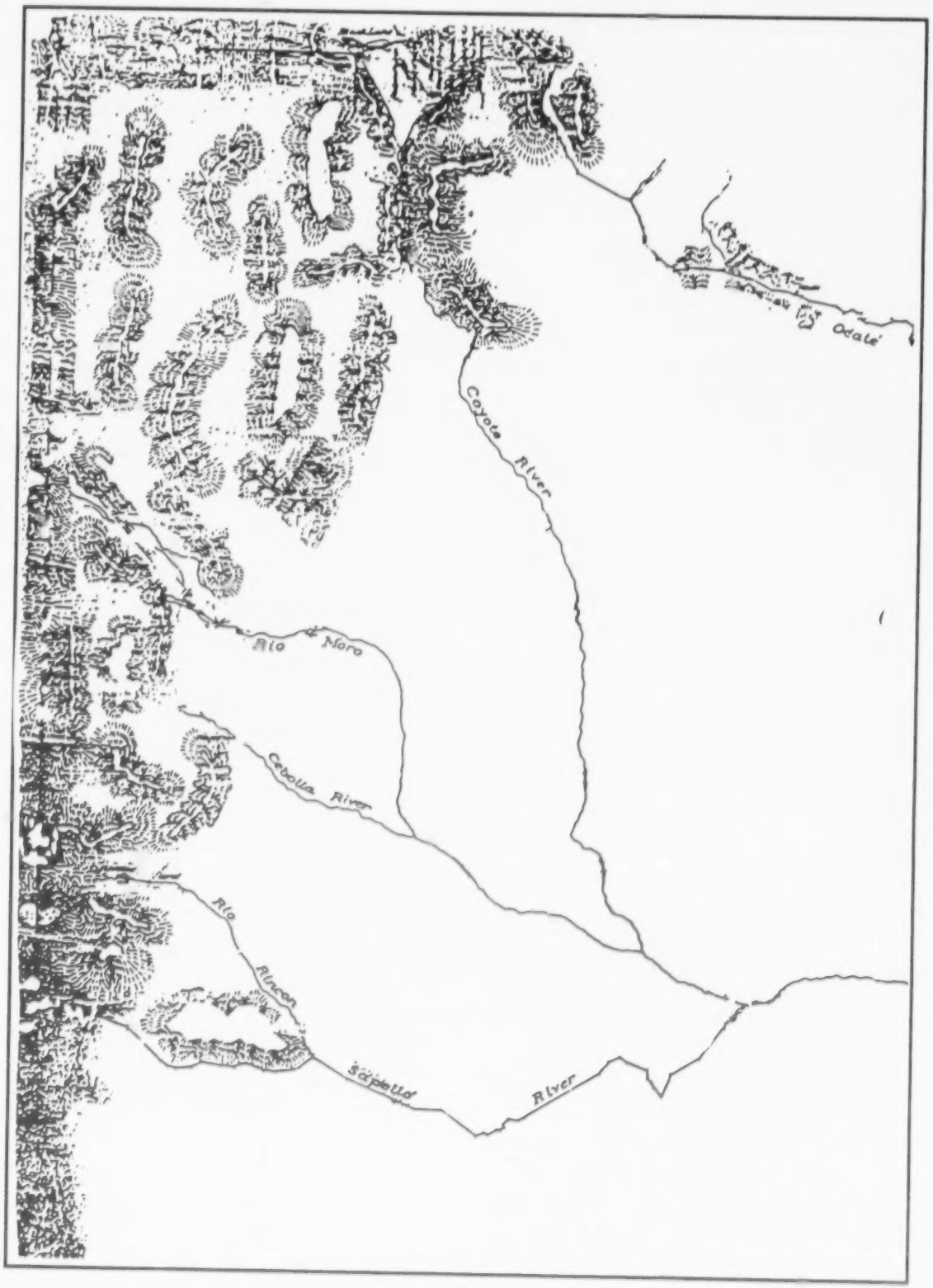
The map on the following page represents your grant. In accordance with the law, you have been placed in possession of your land. Now, you need to develop a plan for establishing the 59 families on the land and for setting up your economic activities. Work with two other students. On your map, plot out the following:

- A townsite(s) giving each family a plot of land for building a home. Your townsite should provide for important public buildings such as a church. Also provide a means for defending your settlement.
- Separate farming plots for each family. You should provide a system for crop irrigation and water for domestic use. The land receives little rainfall during the summer months. The water supply is dependent on the small streams that flow out of the mountains carrying the melting snow. During years when the snow pack is light, the streams run dry.
- An area of common land where all families may graze two or three cows and a few sheep.
- An area of common land where all families may gather firewood and timber for building houses. Other activities on this common will include grazing larger herds of cattle and sheep, hunting, and fishing.

You may also want to think about how you will provide for future settlers who may want to come to your community. How will they be accommodated? What rights to the land will they have?

Try to make your system of land distribution as fair as possible for all members of the community.

When your group has finished its work, you will be asked to share your plan with the class.


Ocale
Coyote River
Rio Nora
Cebolla River
Rio Rincon
Salado River

SETTLING LAND GRANT CLAIMS

Differing Cultural and Legal Views of Land Ownership

Hispanos and Americans both believed in the value and importance of land, but they differed in their ideas about methods of ownership. The Hispanic culture of the Southwest was land-based. Land was basic to family existence, the basis of life itself. It was rarely something bought and sold for profit. Ownership was based on *custom* and *use*. If a family occupied a section of land for a number of years, they had the right to own it. If the family stopped using the land and left, the land was open for occupation by another family.

Most Hispanos were unable to use the English language and were unaware of the American system of laws. They often did not keep careful records of land titles. In a customary system, it is not essential to do so. The Americans' complicated system of land ownership and transfer was too confusing. It was difficult to understand ownership based upon registered pieces of paper filed in a clerk's office. Few individuals possessed titles to their land that could stand the test of the American courts.

Spanish-Mexican law allowed transfer of property by verbal agreement. Therefore, sales of privately owned land were not often in writing; those that were, were rarely filed with the authorities. This system was based on the idea that each person knew the geography of the area and the people living there. Face-to-face contact with others in the community, religious beliefs, and the necessity of cooperation were the basis for enforcing verbal agreements.

Also, the Hispanos were not used to a system of direct taxation on the land. Spanish-Mexican law imposed taxes on the products of the land, not the land itself. When crops or increases in cattle herds were small, the taxes were less than in years of abundance. Direct taxation created problems in an economic system where cash was not always available. Failure to understand that the government could sell land to recover delinquent taxes led to the loss of many estates.

These cultural differences placed great disadvantages on the traditional communities of the Southwest. The lack of knowledge of the American legal system, its courts, and proceedings contributed to the problems of settling land claims.

Congress Tries to Settle Land Claims

In March 1851, Congress passed a law to settle land claims in California. The law stated that every person claiming land in California by title from the Spanish or Mexican governments could present a claim. The claimant could present any documents or witnesses to support the claim. Claims in California were settled quickly, but this was not true of the other areas of the Southwest.

In July 1854, six years after the treaty, Congress created the Office of Surveyor General to settle claims to lands in the Southwest. The first surveyor-general was William Pelham. Following his arrival in Santa Fe, Pelham invited people to file their claims before him. The surveyor general's responsibility was to recommend to Congress whether to confirm a claim.

There was little response to Pelham's invitation. From the start, the process was mistrusted by the people. To the Hispano, the use of land was more important in deciding its ownership than were any documents. Furthermore, filing a claim was expensive.

Once a claim was filed, there was no due process of law to determine whether the claim was a valid one. The Fifth Amendment to the Constitution of the United States requires that no person shall

be "deprived of...property, without due process of law...." *Due process* means having a hearing, allowing the parties to present evidence and to question witnesses against them. The surveyor general made decisions solely on the basis of the documents filed.

Congress Turns the Problem Over to the Courts

In 1891, Congress created the Court of Private Land Claims to settle all land grant questions in New Mexico, Arizona, and Colorado. The court opened in Denver but shortly afterward moved to Santa Fe.

The Court of Private Land Claims was a five judge board. The court held hearings at which attorneys represented the petitioner and the government. An interpreter attended the hearings. This was the only person required to know and speak the Spanish language. The court gave public notice of its hearings. It had the power to issue subpoenas and keep records of the proceedings.

Any person or corporation could present a claim before the court. The law required that the petitioner provide the following information:

- Date and form of the grant.
- Name and title of the person making the grant.
- Name of the persons holding or claiming the land.
- The size of the grant and its boundaries.
- A map showing the area.
- Any reports of lawful action taken before.

After deciding that a claim was valid, the court ordered a survey of the land. The survey was published. If no one objected, the court gave final approval to the claim. If the court ruled against a petitioner, the petitioner could appeal directly to the Supreme Court of the United States within six months of the original decision.

In deciding the validity of a claim, the court was bound to follow three sources of law: (1) the law of nations, (2) the Treaty of Guadalupe Hidalgo, and (3) the laws of the Republic of Mexico. The law creating the court did not give it the power to consider *custom* as a factor in deciding the validity of a claim. The claimant, rather than the government, had the burden to prove the existence of the grant and whether all its conditions had been met. Further, the court did not recognize the authority of officials other than the governor to make grants, as had been the customary practice. The legal proceedings were very expensive, requiring attorneys, surveyors, and experts to search through Spanish and Mexican archives.

First, the court had to decide whether a claim was a grant recognized by Mexican law. That meant the grant had to have been made by an official with the authority to do so. It also meant having the proper legal documents to support the claim, such as a petition, a title, a report of placing in possession, or approval by the appropriate official. If a grant was *perfect*, the court honored the claim. This meant that the grant had to meet all the conditions set forth in Spanish or Mexican law.

Two important laws passed by the Mexican Congress in 1824 and 1828 were binding on the court.

- **The Colonization Decree (August 18, 1824).** This law invited foreigners and Mexican citizens to establish settlements in the lands belonging to Mexico. It limited the size of a land grant the Mexican government could make to each petitioner.
- **General Rules and Regulations for the Colonization of Territories (November 21, 1828).** This law permitted the governors of the Mexican territories to grant vacant lands. The

persons desiring land petitioned the governor, describing on a map the land requested. Either the territorial deputation (governor's advisory council) or the supreme government in Mexico City had the power to approve grants. No grant could give the right to any mines or minerals on the land. No grant could interfere with Indian rights or titles. When the government approved a grant, the governor signed it. The document served as title to the land. The customary method of placing a grantee in possession of his land was for the local *alcalde*, or justice of the peace, to perform a ritual of throwing earth, pulling weeds, shouting "long live the government," and walking the boundaries of the grant.

The Court of Private Land Claims researched all claims to decide whether they met with the terms of the Mexican laws. This was a long and difficult process. The fact that record keeping was poor and many files no longer existed complicated matters. It was also difficult when there were overlapping claims and changes in ownership of grants. As a result, mistakes were made and people lost their legitimate rights to the land. Nearly two-thirds of the claims filed were rejected. More than half of the decisions made by the Court of Private Land Claims were appealed to the U.S. Supreme Court.

Land Problems Continue

The Court of Private Land Claims was in existence until 1904. During those 13 years, people filed 282 land grant claims in New Mexico alone. Claims from all the states involved totaled 34.5 million acres of land. When the court finished its work, it had honored 75 claims filed in New Mexico. The total land awarded, including eight pueblos, was two million acres. The government and petitioners appealed 57 of the court's decisions to the U.S. Supreme Court.

Many problems related to land remain unsettled. Some of these problems include:

- The land claims not honored by the court entered into the public domain. Much of it became national forest lands, depriving the local people of traditional livelihoods such as woodcutting, grazing, fishing, and hunting.
- Land speculators deprived heirs of their grant lands by purchasing them at ridiculously low prices or through fraudulent legal schemes.
- Lawsuits by heirs to grant lands continue. Heirs claim rights to the land based on mistakes made by the courts or by Congress.
- Land grant surveys included only the outer edges of the claim. Land within the grant remained unplatted. As the land transfers hands, it is difficult to determine who has ownership of which acreage. These mistakes cloud titles to the land. Clouded titles cannot be sold or developed.

What Do You Think?

1. How were the legal systems of land ownership used by the Spanish and Mexican governments different? Why might those differences be important?

2. What issues of fairness arise from the procedures used by the Office of the Surveyor General?

3. Develop a flowchart illustrating the procedures used in the Court of Private Land Claims. What issues of fairness arise from these procedures?

4. Why might it be more appropriate that land grant claims be settled by the courts rather than Congress?

5. Should the procedures for settling land claims have been the same as the procedures used in Spain or Mexico? Why or why not?

6. What issues of fairness remain as a result of the decisions made by the Court of Private Land Claims? What might be some fair ways to settle those issues?

CONTROVERSY AND VIOLENCE ON A COLORADO MOUNTAIN

History of the Sangre de Cristo (Sáhn-gray day Krée-stoh) Grant

What is today southern Colorado was, between 1821 and 1846, part of Mexico. It was governed by the Department of New Mexico, an administrative unit in the Mexican government. Between 1841 and 1843, the Mexican governor of New Mexico, Manuel Armijo (Mahn-uél Ahr-mee-ho), made a number of land grants. Four of the grants were in the present state of Colorado. All four were private grants made to one or two individuals. Together, the four grants contained eight million acres of land.

What was unusual about the grants was their tremendous size. The Sangre de Cristo grant was one million acres, far more than allowed by Mexican law.

Why did Governor Armijo make such large grants? Perhaps it was the threat of invasion by Texas which claimed part of New Mexico. Armijo was not able to protect the distant parts of the territory. So he turned to trusted friends and foreigners who had become citizens of Mexico. Armijo acted in hopes that the grants would establish Mexican ownership and protection for the territory.

In a petition dated December 27, 1843, Narciso Beaubien and Stephen Luis Lee asked for the land that became the Sangre de Cristo Grant. Narciso Beaubien was the sixteen-year-old son of Carlos Beaubien and Maria Paula Lobato of Taos. Stephen Luis Lee was an American who had become a Mexican citizen. In their petition, Narciso and Stephen declared they wanted the land for farming and to raise cattle. On December 30, 1843, Governor Armijo awarded the grant. On January 8, 1844, the *alcalde* (ahl-cáhl-day) at Taos placed the grantees in possession of the land.

The following year, 1845, Narciso and Stephen attempted to settle people on the Rio Culebra (Koo-láy-bra) and the Rio Costilla (Koh-stée-ya). Indian attacks drove them out. Further attempts were delayed when war broke out between the United States and Mexico in 1846.

Lee and Beaubien were killed during the Taos Revolt of 1847 (an uprising against the American

occupation of New Mexico). Narciso's father, Carlos Beaubien, inherited his son's half of the grant. Stephen Luis Lee died without a will. His attorney sold Stephen's interest to Carlos Beaubien for $100.

In 1849 the first permanent settlement was made on the Rio Costilla at what is now Garcia, Colorado. A permanent settlement at San Luis de Culebra occurred in 1851. Church records show a large in-migration of settlers throughout the 1850s. Other plazas established on the Rio Culebra included San Pedro and San Pablo in 1852; San Francisco and La Valle in 1854; Chama in 1855; and, Los Fuertes in 1858. The construction of Fort Massachusetts in 1852 (later moved and renamed Fort Garland) protected the settlements from Indian raids.

Carlos Beaubien gave the settlers of the Rio Culebra plazas a lush pasture land, a commons or *vega* as it is called locally. The commons lies between San Luis, San Pablo, and San Pedro. Originally much larger, today it contains 633 acres and is still used by the residents for grazing horses and cattle. Beaubien also gave the colonists water rights to their land and grazing, hunting and fishing, wood gathering, and timber rights on the mountain. All of these were customary rights under Spanish and Mexican law.

In 1853 Carlos Beaubien, worried about possible taxes on the land, decided to divide the grant. To his daughter, his attorney, and Lee's attorney, each, he gave title to one-sixth of the grant. The remaining half was titled in his name. Beaubien filed for legal confirmation of the grant with the Office of Surveyor General in 1855. The Sangre de Cristo Grant was among the first Spanish and Mexican land grants the Surveyor General recommended to Congress for confirmation. Congress confirmed the grant in 1860 at nearly 1 million acres.

An aging Beaubien, still worried about taxation of his estate, offered to sell his remaining land to William Gilpin, the first territorial governor of Colorado. Gilpin arranged a deal with Beaubien and left for New York to raise the money. When Gilpin returned, he learned of Beaubien's death two months earlier. Beaubien's widow, however, honored the agreement and sold to Gilpin for $15,000. The year was 1863. Gilpin eventually purchased the other half of the grant. In all, Gilpin paid $41,000 for a million acres of land – around four cents an acre.

Just before his death Beaubien filed a document with the Costilla County Clerk. Its purpose was to protect the property and use rights of the settlers. Beaubien wanted to ensure that the small plazas would survive. Therefore, they needed access to lands essential to maintain themselves, other than their small farms. Beaubien specified that the lush commons, the *vega*, was for the benefit of all inhabitants. But knowing the commons was neither enough for all grazing needs nor suitable for sheep, Beaubien specified use rights to the mountain. In the document, known as the Beaubien Concession of 1863, Beaubien wrote:

Beaubien Concession of 1863

It has been decided that the lands of the Rito Seco remain uncultivated for the benefit of the community members of the plazas....According to the corresponding rule all the inhabitants will have enjoyment of benefits of pastures, water, firewood and timber, always taking care that one does not injure another.

When William Gilpin purchased the grant, he knew of and signed this document. The original has since been lost and only copies exist. It is this document that has been at the center of controversy in more recent times.

Faced with repaying his loan and paying the taxes on the land, Gilpin sold shares in the grant to investors. By 1868 there were five co-owners who formed a company called the Colorado Freehold Land

Association. Realizing that the large size of the grant was a problem, the company divided it into two portions. The northern half became the Trinchera Estate, the southern the Costilla Estate.

In 1902 the Costilla Estate was sold for taxes and mortgages to a group of Colorado Springs investors. They renamed the company the Costilla Estate Development Company. The new owners realized that water was the key to making the land productive. They set about acquiring water rights on the Rio Culebra and its tributaries. They completed construction of Sanchez Reservoir on the Culebra system by 1913. The Costilla Estate Development Company laid out three new townsites: New San Acacio, Mesita, and Jarosa. They did sell land, particularly small farm tracts along the streams. The water supply, however, has not been adequate for large-scale agriculture.

The Controversy

The people of Costilla County, Colorado, believe that the descendants of the Sangre de Cristo Grant settlers have a legal and moral right to pasture cattle, gather wood, cut timber, and hunt game on the nearby mountain, no matter who owns it. For 110 years the people had exercised those rights.

Until 1960, the Mountain Tract was the last large piece of unfenced land on the Sangre de Cristo Grant. In that year the Costilla Land Company sold the 77,000-acre tract to John (Jack) T. Taylor for $7 an acre. The sellers warned Taylor that there might be some problems, a "little cloud on the title." That cloud on the title turned out to be the 1863 document declaring the use rights of the local inhabitants.

As soon as Jack Taylor closed the deal, he began clearing timber and leasing grazing rights. Unlike previous owners, however, he began fencing the tract with barbed wire and blocking the roads. In June of that year, he sued three local sheepherders for trespassing on his land.

The first incident of violence between Taylor and the local people occurred in 1961 after he caught three young Hispanic men on his property. Taylor said the men were vandalizing his equipment. The men claimed to be looking for their stray cows. The three men were severely beaten by Taylor and his employees.

When Taylor was taken to the jail in San Luis, an angry crowd gathered outside. The sheriff kept him in jail overnight for his own protection. Taylor was convicted of simple assault and was fined.

During the summer of 1963, Taylor set about fencing the entire tract and erecting barriers on the four roads leading up to the property.

As provided in the Beaubien Concession of 1863, Taylor's deed to the Mountain Tract read as follows:

> All of the land hereby conveyed...[is] subject to claims of the local people by prescription...to right to pasture, wood, and lumber and so-called settlement rights in, to and upon said land....

After purchasing the property, Taylor asked the U. S. District Court to remove this clause from his title. In 1965, the trial court said that the Beaubien-Gilpin agreement was a set of rules. It was not a legal deed and, therefore, not binding. The Court declared that certain historical rights of the local people were null and void (*Taylor v. Jacques*).

The Association for Civic Rights, which represented the local people, appealed the decision to the U.S. Court of Appeals for the Tenth Circuit in Denver. The appellate court in 1967 upheld the decision of the lower court (*Sanchez v. Taylor*). Discouraged by their loss, the Association for Civic Rights disbanded. No appeal was made to the U.S. Supreme Court.

In 1974, a new group of local residents decided to continue to fight for their use rights on the Mountain Tract. This group, mainly young people, felt their elders had given up too easily. They convinced the county commissioners and the sheriff to remove the road barriers Taylor had erected. Taylor, in turn, sued for $1.5 million for damages to his property. The court awarded Taylor $1 and allowed the barricades to remain in place.

In 1975, while Taylor was sleeping in his mountain home, someone fired several bullets through his roof. Taylor suffered a wounded ankle. He returned to North Carolina and rarely visited the mountain again.

The Land Rights Council, as the local group is now called, filed suit in 1981 with the District Court of Colorado. In *Rael v. Taylor*, the council claimed that the decision in *Taylor v. Jacques* was unjust and incorrect. The claim was based on the fact that the 1965 action did not list, nor was notice given to, all residents who had an interest in the use rights to the Mountain Tract. Therefore, many people lost those rights without due process of law. The group also claimed that the decision in the earlier trial relied on incorrect evidence. Over the years the name of the Rito Seco had been changed, causing a mistaken identification of the geographic area in question.

The District Court dismissed the suit in 1986. *Rael v. Taylor* was appealed to the Colorado Court of Appeals. Jack Taylor died in 1988, leaving his estate to his son, Zachary Taylor.

The Lieutenant Governor of Colorado encouraged the parties to settle their dispute once and for all. He proposed that the residents of Costilla County and Zachary Taylor, together, work out a solution fair to both sides. The Lieutenant Governor offered to be the mediator in the dispute. The Colorado Court of Appeals agreed to postpone a ruling until the parties had a chance to see whether they could reach a reasonable and fair settlement.

What Do You Think?

1. How is this controversy an example of what can happen when two differing legal systems come in conflict?

2. Would it be fair not to protect the customary rights of the local people? Why or why not?

3. Would it be fair not to protect the property rights of the land owner? Why or why not?

4. How might you resolve this controversy in a reasonable and fair manner?

INSTRUCTIONS FOR MEDIATORS

1. Help the parties relax. Make them comfortable by explaining the process and the guidelines they will be following. Give them an opportunity to ask questions. Let them know that you will guide the session so that they can communicate openly.

2. Help the parties tell you about the dispute. Ask open-ended questions like "what happened next?" Listen carefully to what is said and don't interrupt.

3. Do not try to determine who is at fault. Do not give advise or make moral judgments about the parties' behavior.

4. Look for things the parties have in common. Use these to help them see some of the good in their relationship.

5. Help the parties identify their own interests.

6. Help the parties generate ways to settle their dispute. Test out alternatives like "If she doesn't use the car on Saturdays, will that allow you all the time to run your errands?"

7. Help the parties think about how they will relate to each other in the future. Focus on the positive aspects of settling the dispute. If possible, help them see the consequences of not settling. If their positions are unrealistic, help them see that, too.

8. Write an agreement that is clear and specifically spells out the responsibilities of the parties.

INSTRUCTIONS FOR THE LAND RIGHTS COUNCIL

The members of the Land Rights Council are the descendants of the Sangre de Cristo Grant settlers. Your goal during this mediation is to reach a fair settlement protecting your ancient rights to use the Mountain Tract. You have willingly agreed to participate in this process and to live by any settlement the parties may mutually agree upon.

Your claims are old ones, based on the customary uses of land recognized by the laws of Spain and Mexico. Your claim is also based on the Beaubien Concession of 1863. You may use any information you have learned earlier in supporting your position.

Meet as a group and decide how you would like to see the dispute resolved. Remember that you may need several sessions before reaching an agreement. The following are the use rights you claim on the property now owned by Zachary Taylor:

- **Grazing rights.** Historically, you have used the Mountain Tract for domestic grazing of livestock without charge. The Council would like Mr. Taylor to set aside land for domestic grazing at no fee. You want other land set aside for commercial grazing at a reasonable fee. The grazing rights would be granted in perpetuity.
- **Wood gathering and timber.** Firewood gathering is necessary to the survival of the community. Since the fencing of the mountain, your supply of wood has decreased. Timber is also necessary for constructing homes, corrals, and building fences. You want access to downed wood for heating and green timbers for domestic purposes only.
- **Hunting and fishing.** Historically the people of Costilla County have used the mountain for hunting and fishing. Game shot during hunting season has always been a source of supplemental food for the local people. You want certain hunting and fishing rights; for example, Mr. Taylor could set aside a certain number of hunting and fishing "permits" that would be allocated to the people by a local board. You would also like to cooperate with Mr. Taylor to insure that the animal and fish populations are maintained and not jeopardized by over-harvesting.
- **Recreational use.** Recreational uses of the mountain go back to the original settlements when it was used for picnicking, camping, and hiking. You want certain land to be set aside for recreational use. This would be in the form of a "park" for local use, not open to the public as a whole.
- **Access.** The above rights require access to the mountain. Furthermore, some property owners do not have access to their land because of Mr. Taylor's roadblocks. You want roadblocks removed and roads maintained for the exercise of the rights set forth above.

It is the sincere desire of the Land Rights Council to reach a settlement that will benefit all parties concerned. You want all rights to be granted in perpetuity and to be managed by a board of local citizens appointed for that purpose.

INSTRUCTIONS FOR ZACHARY TAYLOR

You represent the interests of Zachary Taylor, the son and heir of John (Jack) Taylor. The estate of John Taylor remains in the probate courts. The probate court is waiting for the Internal Revenue Service to determine the inheritance taxes on the estate. This dispute may work to your advantage in the short run because it lowers the value of the land. However, you may eventually decide to sell the property; thus, a settlement of this controversy would ultimately be to your benefit.

Past lawsuits on the use rights claimed by the local people have been resolved in your favor. You really would like to see previous court rulings stand. The claims in this appeal are identical to those rejected in 1965, a decision upheld on appeal in 1967. You assert that the decision made in the lower court is final and thus all claims should be regarded as settled. However, the current appeal before the courts might result in a decision for the Land Rights Council. You have therefore willingly agreed to participate in this process and to live by any settlement the parties may mutually agree upon.

Your interests in the land are primarily commercial. You have used the mountain to harvest timber and to graze your herds of cattle. You have hired a manager who is responsible for your business interests on the Mountain Tract. You have instructed your manager to improve relations with the local people. A number of employees reside on the land, and you keep expensive equipment necessary to your commercial activities. You are also interested in maintaining the environment and preserving the natural beauty of the land.

Since your purchase of the ranch, commercial grazing for a contracted fee with select local residents has continued. The passage of time has changed the needs of the local people. Domestic grazing, hunting, and timber are probably not as important for survival as they were in the past.

You have experienced numerous problem with the local residents. Some have resulted from your negative attitude toward them. Others have resulted from the actions of the residents themselves. Some of the problems you have experienced include:

- Illegal taking of timber
- Damage to your fences and equipment
- Poaching of game